
MODIFICATION AGREEMENT
Modifying Promissory Note and a Deed of Trust
[Scenic Point Phase II]

Effective Date: January 31, 2018

Holder of Note and Lien: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, non-profit corporation

Holder's Mailing Address: 1000 East 11th Street, Suite 200
Austin, Travis County, Texas 78702

Obligor: AUSTIN HABITAT FOR HUMANITY, INC., a Texas non-profit corporation.

Obligor's Mailing Address: 500 West Ben White Boulevard
Austin, Travis County, Texas 78704

Note

Date: February 8, 2011

Original principal amount: US \$1,250,000.00

Borrower: AUSTIN HABITAT FOR HUMANITY, INC., a Texas non-profit corporation.

Lender: AUSTIN HOUSING FINANCE CORPORATION

Maturity date: December 31, 2026

Unpaid Principal and Interest on Note: U.S. \$1,250,000.00

Lien Documents:

A Deed of Trust dated January 17, 2017, executed by Borrower and recorded in Document Number 2017124184, Official Public Records of Travis County, Texas.

Property (including any improvements) Covered by the Lien (the "Property"):

The certain real property described on Exhibit "A" attached to this Modification Agreement and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto.

Modified Terms:

The terms of the Promissory Note and Deed of Trust are modified in the following respect only:

1. The Principal Amount is increased by \$1,270,000.00 for a total Principal Amount of **Two Million Five Hundred Twenty Thousand and 00/100 U. S. Dollars (\$2,520,000.00)**.

The Note is secured by liens against the Property. Whether Obligor is primarily liable on the Note or not, Obligor nevertheless agrees to pay the Note and comply with the obligations expressed in the Lien Documents.

For value received, Obligor renews the Note and promises to pay to the order of Holder of Note and Lien, according to the Modified Terms, the Unpaid Principal and Interest on Note. All unpaid amounts are due by the Extended Maturity Date of Note. Obligor also extends the liens and agrees to perform and comply with all covenants, conditions and obligations described in the Lien Documents.

The Note and the Lien Documents continue as written, except as provided in this agreement.

Obligor warrants to Holder of Note and Lien that the Note and the Lien Documents, as modified, are valid and enforceable and represents that they are not subject to rights of offset, rescission, or other claims.

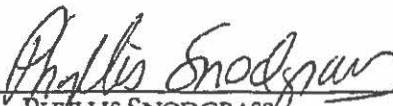
When the context requires, singular nouns and pronouns include the plural.

This document may be executed in multiple counterpart signature pages that, when taken together, serve as a fully executed original when signed by all parties and properly acknowledged.


[Remainder of Page Intentionally Left Blank. Signature page follows.]

EXECUTED AND DELIVERED effective the date first above stated.

Obligor: **AUSTIN HABITAT FOR HUMANITY, INC.**

BY: 
NAME: PHILLIS SNODGRASS
TITLE: Chief Executive Officer

AHFC: **AUSTIN HOUSING FINANCE CORPORATION**

BY: 
NAME: JOE PANTALIONE
TITLE: Authorized Representative

ATTACHED: EXHIBIT A - Legal Description of Property

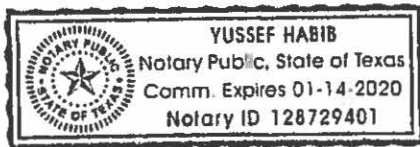
[Remainder of Page Intentionally Left Blank. Notary Acknowledgements Page Follows.]

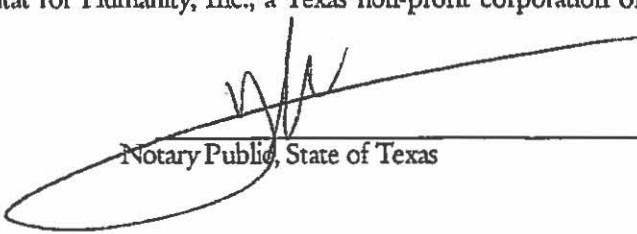
(Acknowledgments)

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on January 15th, 2018 by PHYLLIS SNODGRASS, Chief Executive Officer, Austin Habitat for Humanity, Inc., a Texas non-profit corporation on behalf of said corporation.

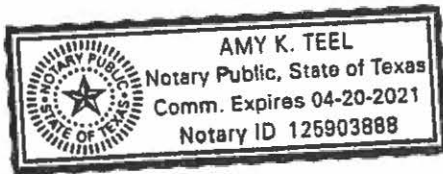



Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on January 31, 2018 by JOE PANTALION, Authorized Representative, Austin Housing Finance Corporation, a Texas public, non-profit corporation, on behalf of said corporation.




Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Austin Housing Finance Corporation
ATTN: A&D Program Manager
1000 East 11th Street, Suite 200
Austin, Texas 78702

PREPARED IN THE LAW
OFFICE OF:

City of Austin
Law Department

EXHIBIT A
Legal Description of the Property

Lot 91 through 117, inclusive, Block A, Lots 25 through 65, inclusive, and Lot 122, Block C, SCENIC POINT SUBDIVISION, PHASE TWO, according to the map or plat thereof, recorded in Document No. 200200035, Official Public Records, Travis County, Texas.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Feb 06, 2018 03:54 PM

2018017769

ESPINOZAC: \$42.00

Dana DeBeauvoir, County Clerk

Travis County TEXAS



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: August 8, 2017
TO: Memo to File
FROM: John Hilbun, Contract Mgmt Specialist IV
RE: MA 7200 NG170000046

This MA was created as a payment mechanism only. The original contract is administered, maintained, and located with Austin Housing Finance Corporation (AHFC) or Neighborhood Housing & Community Development (NHCD).



Austin Housing Finance Corporation

MEMO

P.O. Box 1088, Austin, TX 78767-1088

Sherry Cardino, Contract Compliance Specialist Senior
(512) 974-3153, Fax: (512) 974-3161, sherry.cardino@ci.austin.tx.us

Date: August 4, 2017
To: Linda Lindsey, Finance
Subject: PO# Set-Up Request

This memo is to request a PO#/RQM be set up for the new loan agreement between **Austin Habitat for Humanity** and the **Austin Housing Finance Corporation**.

Purchasing approval is required so that funds may be available for draw-down/payment requests for costs associated with infrastructure development of **Scenic Point Subdivision, Phase II** to be ~~located at~~ located near Boyle Drive, Zachary Drive, and Farrell Glen Drive, in Austin, Travis County, Texas 78724.

Once infrastructure development has been completed, 67 single-family homes (or more) will be constructed and sold to buyers whose total household incomes are at or below 80% of MFI. The term of the agreement is from contract execution through December 31, 2026 (10-Year Affordability Period).

Vendor ID: **AUS6053110**
Austin Habitat for Humanity
500 W Ben White Blvd
Austin, TX 78704
CONTACT: Kim Kestner

Please find the following payment and funding information (as noted on the CARR form):

Amount:	Approved Funding Line:	IDIS #	Funding Source:
\$398,015.55	6144 - 7208 - 6294 - 6830 - 226131	6294	CDBG
\$391,984.45	6144 - 7208 - 6294 - 6830 - 226231	6294	CDBG
\$460,000.00	7011 - 7207 - 1304 - 6830	N/A	GO Bonds

The CARR form and its attachments are included.

Please contact Sherry Cardino or David Potter should you have any questions. Thank you in advance for your assistance.

**Environmental Assessment
Determinations and Compliance Findings
for HUD-assisted Projects
24 CFR Part 58**

Project Information

Project Name: Scenic-Point-Subdivision-Phase-II

HEROS Number: 900000010024741

Responsible Entity (RE): AUSTIN, PO Box 1088 Austin TX, 78767

RE Preparer: Sherry Cardino

State / Local Identifier:

Certifying Officer: Rosie Truelove

Grant Recipient (if different than Responsible Entity):

Point of Contact:

Consultant (if applicable):

Point of Contact:

Project Location: N of Loyola Lane & Johnny Morris, Austin, TX 78724

Additional Location Information:

The project site is located in northeast Austin east of Hwy 183 near the intersection of Johnny Morris Road and Loyola Lane. There are no existing structures on the property. Scenic Point is a subdivision with a total of 118 residential lots, and only 51 were developed including all necessary streets and utilities. This land development occurred

in early 2000s, and while only 51 lots were developed only one house was ever built until very recently during 2015/2016 a builder acquired the completed lots and has started to build homes. Austin Habitat for Humanity (AHFH) acquired the undeveloped portion of the subdivision with all entitlements including subdivision plat and subdivision construction permit to develop 67 residential lots. An update of the subdivision construction permit is currently underway. The original engineer-of-record is assisting us in addressing comments from city staff on the subdivision construction plans.

Direct Comments to: Neighborhood Housing and Community Development
Department, ATTN: A&D Environmental Compliance, 1000 E.
11th Street, Suite 200, Austin, TX 78701

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

The extent of the land development will include water, wastewater, streets, and drainage infrastructure to service the neighborhood. Austin Habitat for Humanity will build 67 single-family detached homes for ownership. Zoning is in place and is SF-4A small lot subdivision, which allows for moderate density single-family residential use on a lot. AHFH focuses on a clientele that earns 60% or less of the median family income. Families are qualified for a 0% mortgage, provided homeownership counseling, and perform a 300-hour sweat equity contribution toward the construction of their new home. The subject subdivision is in an area where there are other single-family homes.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]:

The project site is located in northeast Austin east of Hwy 183 near the intersection of Johnny Morris Road and Loyola Lane. The project site is undeveloped but has been platted. Austin Habitat for Humanity (AHFH) anticipates developing the site for 67 single-family workforce affordable homes. AHFH's current portfolio of house plans range from 900 S.F. to 1,400 S.F. and include 2 bedrooms 1 bath through 5 bedrooms 2 baths. AHFH focuses on a clientele that earns 60% or less of the median family income, but can serve up to 80% MFI. Families are qualified for a 0% mortgage, provided homeownership counseling, and perform a 300-hour sweat equity contribution.

Existing Conditions and Trends [24 CFR 58.40(a)]:

The project site is approximately 14 acres in area and the land has some slope to it. The previous owner/developer developed the half of the subdivision only 51 out of the 118 legally platted lots. A local builder is currently building market rate homes on the existing residential lots, while Austin Habitat for Humanity (AHFH) will be building affordable workforce housing in the remaining residential lots in the subdivision. The surrounding area is mostly residential and is near Barbara Jordan Elementary School and Gus Garcia Middle School. It is within a half-mile of a bus stop and is near Highway 183--a major transportation arterial. This project is also located across the street from a 208-

acre master planned community called Colony Park and owned by the City of Austin. Colony Park will have a variety of residential and commercial developments.

Maps, photographs, and other documentation of project location and description:

Map Location & Plat - Scenic Point Subd Ph II, 8-16-16.pdf

FINAL Scenic Point Phase I ESA doc(1).pdf

Hazards Nuisances and Site Safety Checklist Scenic Point.doc

Field Contamination Checklist - Scenic Point_AA.pdf

Determination:

✓	Finding of No Significant Impact [24 CFR 58.40(g)(1); 40 CFR 1508.13] The project will not result in a significant impact on the quality of human environment
	Finding of Significant Impact

Approval Documents:

Scenic Point ERR Signature Page, 4-27-17.pdf

Public Notice Combined - Scenic Point, 4-27-17.pdf

7015.15 RROF - Scenic Point Subd Ph II, Signed 5-17-17.pdf

7015.15 certified by Certifying Officer

on:

7015.16 certified by Authorizing Officer 6/26/2017

on:

Funding Information

Grant / Project Identification Number	HUD Program	Program Name
B-16-MC-48-0500	Community Planning and Development (CPD)	Community Development Block Grants (CDBG) (Entitlement)

Estimated Total HUD Funded, \$1,250,000.00
Assisted or Insured Amount:

Estimated Total Project Cost [24 CFR 58.2 (a) (5)]: \$10,307,051.00

Compliance with 24 CFR §50.4, §58.5 and §58.6 Laws and Authorities

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §50.4, §58.5, and §58.6	Are formal compliance steps or mitigation required?	Compliance determination (See Appendix A for source determinations)
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §50.4 & § 58.6		
Airport Hazards Clear Zones and Accident Potential Zones; 24 CFR Part 51 Subpart D	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The project is within 15,000 feet of a military airport or within 2,500 of a civilian airport. However, it is not within an APZ or RPZ/CZ. The project is in compliance with Airport Hazards requirements.
Coastal Barrier Resources Act Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	This project is not located in a CBRS Unit. Therefore, this project has no potential to impact a CBRS Unit and is in compliance with the Coastal Barrier Resources Act.
Flood Insurance Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	FEMA Map Panel #FM48453C0470K - Zone X - Based on the project description the project includes no activities that would require further evaluation under this section. The project does not require flood insurance or is excepted from flood insurance. While flood insurance may not be mandatory in this instance, HUD recommends that all insurable structures maintain flood insurance under the National Flood Insurance Program (NFIP). The project is in compliance with Flood Insurance requirements.
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR §50.4 & § 58.5		
Air Quality Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Austin is within a county that is an area of Nonattainment. The project's county or air quality management district is in attainment status for all criteria pollutants. The project is in compliance with the Clean Air Act.
Coastal Zone Management Act Coastal Zone Management Act, sections 307(c) & (d)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Austin is more than 134 miles to the closest CZB. This project is not located in or does not affect a Coastal Zone as defined in the state Coastal

		Management Plan. The project is in compliance with the Coastal Zone Management Act.
Contamination and Toxic Substances 24 CFR 50.3(i) & 58.5(i)(2)]	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Phase I ESA (attached to the EA/HEROS) was performed in conformance with the scope and limitations of ASTM Standard E 1527-13 of the Scenic Point Subdivision located on Johnny Morris Road, north of the Loyola Lane and Johnny Morris Road intersection in east Austin, Texas. Any exceptions to, or deletions from, this standard are described in Section 1.4 of this report, and data gaps and data failures are described in Section 7.0. Based on the results of the records review, Site reconnaissance, and interviews, the assessment has revealed evidence of no RECs in connection with the Subject Property. On-site or nearby toxic, hazardous, or radioactive substances that could affect the health and safety of project occupants or conflict with the intended use of the property were not found. The project is in compliance with contamination and toxic substances requirements.
Endangered Species Act Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	After reviewing the Proposed Preserve and National Wildlife Refuge Boundaries from the Balcones Canyonlands Conservation Plan Fee Zone Map Habitat Zones the map shows there is no suitable habitat in the project area, therefore a No Effect finding has been concluded. This project will have No Effect on listed species based on a letter of understanding, memorandum of agreement, programmatic agreement, or checklist provided by local HUD office. This project is in compliance with the Endangered Species Act.
Explosive and Flammable Hazards Above-Ground Tanks)[24 CFR Part 51 Subpart C	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Phase I ESA performed in conformance with the scope and limitations of ASTM Standard E 1527-13 of the Scenic Point Subdivision located on Johnny Morris

		Road, north of the Loyola Lane and Johnny Morris Road intersection in east Austin, Texas. Any exceptions to, or deletions from, this standard are described in Section 1.4 of this report, and data gaps and data failures are described in Section 7.0. Based on the results of the records review, Site reconnaissance, and interviews, the assessment has revealed evidence of no RECs in connection with the Subject Property. There are no current or planned stationary aboveground storage containers of concern within 1 mile of the project site. The project is in compliance with explosive and flammable hazard requirements.
Farmlands Protection Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Based on the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) NCSS Web Soil Survey Map, this project does not include any activities that could potentially convert agricultural land to a non-agricultural use. The project is in compliance with the Farmland Protection Policy Act.
Floodplain Management Executive Order 11988, particularly section 2(a); 24 CFR Part 55	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Zone X per FEMA Map Panel FM48453C0470K. This project does not occur in a floodplain. The project is in compliance with Executive Order 11988.
Historic Preservation National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Texas Historic Commission (THC) contacted. THC responded with 'tract proposed for development is in an area that has the potential for cultural resources and archeological sites have been previously documented nearby.' THC requested a professional archeologist to survey the tract to determine the presence of, and assess, cultural resources within the area of impact for this project, and should include limited subsurface testing including trenching in areas with the potential for deeply buried cultural deposits and should meet the minimum

		<p>archeological survey standards. Habitat hired Goshawk Environmental Consulting, Inc. (Goshawk) and cultural resources survey work was conducted and submitted to THC. THC responded with a 'No Historic Properties Affected' stamp 'To Proceed' on 2/21/17. Two letters were returned of the ten sent to THPO and are noted and are attached. Based on Section 106 consultation there are No Historic Properties Affected because there are no historic properties present. The project is in compliance with Section 106.</p>
<p>Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Project not within 1,000 feet of a busy roadway, but within 3,000 feet of a railroad. Therefore a noise assessment required. Federal Railroad Administration Crossing Database for Railroad Operations was used to generate the data required for a Noise Assessment. The noise level was acceptable: 53.6 db. See noise analysis. The project is in compliance with HUD's Noise regulation.</p>
<p>Sole Source Aquifers Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Based on Texas Commission on Environmental Quality's Edwards Aquifer Map Viewer, project is not located on a sole source aquifer area. The project is in compliance with Sole Source Aquifer requirements.</p>
<p>Wetlands Protection Executive Order 11990, particularly sections 2 and 5</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Based on the U.S. Fish and Wildlife Service National Wetlands Inventory, project will not impact on- or off-site wetlands. The project is in compliance with Executive Order 11990.</p>
<p>Wild and Scenic Rivers Act Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Based on the attached map of Texas, Austin is more than 200 miles from the closest WSR; the Rio Grande River. This project is not within proximity of a NWSRS river. The project is in compliance with the Wild and Scenic Rivers Act.</p>
<p>HUD HOUSING ENVIRONMENTAL STANDARDS</p>		

ENVIRONMENTAL JUSTICE		
Environmental Justice Executive Order 12898	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	No adverse environmental impacts were identified in the project's total environmental review. The project is in compliance with Executive Order 12898.

Environmental Assessment Factors [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27]

Impact Codes: An impact code from the following list has been used to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement.

Environmental Assessment Factor	Impact Code	Impact Evaluation	Mitigation
LAND DEVELOPMENT			
SOCIOECONOMIC			
COMMUNITY FACILITIES AND SERVICES			
NATURAL FEATURES			

Supporting documentation

[Transit - CapMetro - 237 - Northeast Feeder.pdf](#)
[Transit - CapMetro - 233 - Far Northeast Feeder.pdf](#)
[Transit - CapMetro - 37 - Colony Park, Windsor Park.pdf](#)
[Transit - Cap Metro - Scenic Pt, 4-25-17.docx](#)
[Parks - Scenic Pt, 4-25-17.docx](#)
[Health Care - HEB to Scenic Pt, 4-25-17.docx](#)
[School - LBJ Early College High School _ Austin ISD.pdf](#)
[School - AISD - Jordan Elementary - Scenic Pt, 4-19-17\(1\).docx](#)
[acs2014_report.pdf](#)
[census2010sfl_report.pdf](#)
[School - Barbara Jordan Elementary School _ Austin ISD.pdf](#)
[School - AISD - Jordan Elementary - Scenic Pt, 4-19-17.docx](#)

Additional Studies Performed:

Phase I Environmental Site Assessment, 2-17-16. Goshawk Environmental Consulting, Inc. (Goshawk) conducted a cultural resources survey of the proposed Scenic Point Phase 2 Residential Development February 2017.

Scenic Point Phase 2 CR Report(1).pdf
FINAL Scenic Point Phase I ESA doc(2).pdf

Field Inspection [Optional]: Date and completed

by:

Andy Alarcón

3/3/2017 12:00:00 AM

FINAL Scenic Point Phase I ESA doc(1).pdf
Hazards Nuisances and Site Safety Checklist Scenic Point.doc
Field Contamination Checklist - Scenic Point_AA.pdf

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]:

THC SHPO consultation, THPO consultation, FEMA Mapper, City of Austin FloodPro Mapper, USFW National Wetlands Inventory Map, EPA NEPAassist, Wild & Scenic Rivers Map, HUD DNL calculator results, U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS), Sole Source Aquifer - Edwards Aquifer Map Viewer from Texas Commission on Environmental Quality, Environmental Justice Screening and Mapping Tool (Version 2016) United States Environmental Protection Agency, Travis County Appraisal District

List of Permits Obtained:

New construction projects require construction permits. The Residential Plan Review Division reviews new construction, additions, interior remodeling and demolition of single-family, duplex or two family houses and/or accessory buildings on one lot. Residential construction projects are reviewed for compliance with Chapter 25-2 of the Land Development Code, the 2012 International Residential Code, and Chapter 25-12, Technical Codes (local amendments).

Public Outreach [24 CFR 58.43]:

Public Notice Dissemination List: Department of Housing and Urban Development (San Antonio), EPA Region 6 Main Office (Dallas), Texas Department of Housing and Community Affairs (Austin), Texas Rio Grande Legal Aid (Austin), Easter Seals Central Texas (Austin), ADAPT of Texas (Austin), Govalle-Johnston Terrace Neighborhood Contact Team, Cavalier Park Neighborhood Assn, Colony Park Neighborhood Assn., Heritage Village of Austin Home Owner's Association, Imperial Valley Neighborhood Association, L.B.J. Neighborhood Association

Cumulative Impact Analysis [24 CFR 58.32]:

The potential environmental impacts from the proposed project are primarily short-

term impacts associated with the construction of the housing. It is possible that other proposed construction schedules in the project area may overlap with the project, but the overlap is likely to be minimal.

Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]

No development alternatives to the proposed project have been identified or considered, because the proposed action would not result in any significant unavoidable impacts.

No Action Alternative [24 CFR 58.40(e)]

The No Action Alternative would be not to construct this development. Under this alternative, the affordable housing objectives included in the project would not be achieved, and it is possible that another residential development could be approved for the site that might not include affordable housing units. Any residential project proposed on the site would result in short-term impacts similar to those of the proposed project.

Summary of Findings and Conclusions:

Generally speaking, projects of this type result in low environmental impacts. Scenic Point is located in a previously developed area where significant ground disturbance has already taken place. Other than common grasses, the site is largely without vegetation. The proposed construction is designed to be consistent with surrounding properties. Water, sewer, electric, and gas utilities have been partially installed previously and have the capacity to serve the development. The neighborhood is adequately served by the Police and Fire Departments and the local School District.

Mitigation Measures and Conditions [CFR 1505.2(c)]:

Summarized below are all mitigation measures adopted by the Responsible Entity to reduce, avoid or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure or Condition	Comments on Completed Measures	Complete
Permits, reviews and approvals	New construction projects require construction permits. The Residential Plan Review Division reviews new construction, additions, interior remodeling and demolition of single-family, duplex or two family houses and/or accessory buildings on one lot.	N/A	

	Residential construction projects are reviewed for compliance with Chapter 25-2 of the Land Development Code, the 2012 International Residential Code, and Chapter 25-12, Technical Codes (local amendments).		
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Mitigation Plan

No mitigating measures required.

Supporting documentation on completed measures

If approved, this action would authorize negotiation and execution of a loan agreement with Austin Habitat for Humanity ("Habitat"), or an affiliate, for a total loan amount not to exceed \$1,250,000. The purpose of the loan is to provide funding for the installation of infrastructure in the planned 67-unit Scenic Point Subdivision, Phase II. The property consists of 14 acres with Johnny Morris Road as the eastern boundary and approximately 0.75 miles north of Loyola Lane in District 1.

Proposed Project

Habitat plans to build out Phase II of the Scenic Point Subdivision on land that was donated to the organization in 2016. Habitat will install the infrastructure to support 67 detached single-family homes that will be built and sold to low- and moderate-income households.

Estimated Sources of Funds

<u>Sources</u>		<u>Uses</u>	
Owner Equity	\$ 798,000	Pre-development	\$ 651,025
House Build Sponsorships	6,700,000	Construction Costs	8,800,000
Current AHFC Request	1,250,000	Soft and Carrying Costs	<u>566,975</u>
Anticipated Future AHFC Request	<u>1,270,000</u>	Total	\$10,018,000
Total	\$ 10,018,000		

Population Served

All buyers must have total household incomes at or below 80% of the Median Family Income for the Austin-Round Rock Metropolitan Statistical Area, currently \$62,250 for a four-person household. Individuals and families who successfully complete Habitat's homebuyer education program and contribute 300 hours of sweat equity will qualify for a 0% interest mortgage from Habitat.

Project Attributes

- Homes will consist of 2 through 4 bedrooms, depending upon the family's needs. The size of the homes will range from 1,000 square feet to 1,359 square feet.
- Prices will range from \$120,000 to \$169,000; however, each household's mortgage amount would range from \$75,000 to \$90,000. Habitat provides a zero percent (0%) interest second mortgage which would require no repayment until the home is sold.
- The typical monthly payment for principal, taxes, and insurance will range from approximately \$640-\$870.
- To ensure long-term affordability of the homes, Habitat uses a Shared Equity and Right of First Refusal model of ownership.

Current Property Tax Status and Future Impact

According to Travis Central Appraisal District website (www.traviscad.org), the property is currently 100% exempt from property taxation under the exemption "Improving property for housing with volunteer labor." After the homes are built and sold, the properties will return to the property tax rolls.

Austin Habitat for Humanity, Inc.

Austin Habitat for Humanity is a 501(c)(3) non-profit organization founded in 1985. Its mission and vision are anchored around dedication to ending the cycle of poverty housing and the deeply held belief that everyone deserves a decent, affordable place to live. To date, Habitat has built more than 335 homes in the Austin area.

For more information on the proposed project, as well as socioeconomic characteristics and amenities in the surrounding area, please see the project's Development Information Packet here:

<http://austintexas.gov/page/fy-16-17-funding-applications>.

**ACQUISITION AND DEVELOPMENT PROGRAM
LOAN AGREEMENT**

**Austin Habitat for Humanity, Inc.
Scenic Point Phase II
Infrastructure Development
General Obligation Bond funds, and CDBG funds [CFDA 14.218]**

Effective Date: July 31, 2017

THIS ACQUISITION AND DEVELOPMENT PROGRAM LOAN AGREEMENT (the "Loan Agreement"), is between **AUSTIN HABITAT FOR HUMANITY, INC.**, a Texas non-profit corporation organized and operated under the Texas Non-profit Corporation Act (the "Borrower"), and the **AUSTIN HOUSING FINANCE CORPORATION**, a Texas public, nonprofit corporation organized and operated under Chapter 394, Texas Local Government Code (the "AHFC").

Recitals

WHEREAS, the AHFC has received certain funds from the City of Austin from proceeds of general obligation affordable housing bonds of which AHFC has approved a loan from its A&D program using General Obligation Bond Proceeds to Borrower in combination with certain funds from the United States Department of Housing and Urban Development (HUD) under the Community Development Block Grants (CDBG) Program, as enacted under Title I of the Housing and Community Development Act of 1974. Funding was approved by the AHFC Board of Directors on June 8, 2017, for a total loan amount to the Borrower not to exceed \$1,250,000 (Loan) for the Project; and

WHEREAS, Borrower has submitted an application for funding through the AHFC Acquisition and Development (the "A&D") Program dated **February 2, 2017**; and

WHEREAS, the City of Austin has contracted with AHFC to carry out its Community and Housing Development projects; and,

WHEREAS, making the Loan to Borrower, which will be secured by a Deed of Trust applicable to the property and improvements (the "Property") to be constructed by Borrower, will enable Borrower to fulfill its mission of providing affordable homeownership opportunities to persons with low and very low incomes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

Section 1 DEFINITIONS. As used in this Loan Agreement and any attachment or exhibit incorporated in it, the terms defined in the A&D Program Definitions attached as **Exhibit "A"** to this Loan Agreement and by this reference incorporated in it have the meanings assigned to each term.

Section 2 PURPOSE AND AMOUNT OF LOAN. The Loan is for the purpose of implementing and carrying out the Project as further described in the **Exhibit "B"** (Statement of Work and Budget), including construction on the Property and achieving the obligations of Borrower under the A&D Program.

Section 3 THE NOTE. The Loan to be made hereunder shall be evidenced by a promissory note dated of even date with this Loan Agreement (the "Note").

Section 4 TERMS OF PAYMENT. The Loan to be made hereunder shall bear interest at the rate specified in the Note and shall be paid in accordance with the terms and conditions of the note of even date with this Loan Agreement.

Section 5 TERM. The term of this Loan Agreement and the Loan shall begin on the Effective Date of this Loan Agreement and end on the maturity date stated in the Note.

Section 6 RIGHTS AND OBLIGATIONS. The holders of the Note, and Borrower, hereby expressly reserve all rights to jointly amend any provisions of this Loan Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the Note.

Section 7 PERFORMANCE AND COMPLIANCE WITH ALL LAWS.

- 7.1 **Agreement to Perform.** Borrower agrees to perform the Project and to produce reports as necessary until completion of the Project in accordance with the terms and conditions of this Loan Agreement.
- 7.2 **Prevailing Documents.** In the event any conflict should arise between the terms of this Loan Agreement, the other Loan Documents, and the Program Guidelines, this Loan Agreement shall prevail, then the other Loan Documents, then the Program Guidelines.
- 7.3 **Performance within Legal Requirements.** It is expressly understood that Borrower's performance shall be in strict compliance with all Legal Requirements, which in no way is meant to constitute a complete compilation of all duties imposed upon Borrower by law or administrative ruling or to narrow the standards which Borrower must follow. Borrower shall promptly refund any funds not expended in accordance with the Legal Requirements or the Loan Documents.
- 7.4 **Legal Requirements Governing Property and Improvements.** The Land and the Improvements and the intended use thereof by Borrower comply with all Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property.
- 7.5 **Compliance with Legal Requirements.** Borrower will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether

the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Property.

Section 8 CONDITIONS OF CLOSING. The obligation of AHFC to make a loan as provided in this Loan Agreement is subject to the receipt by AHFC from Borrower of the Note in compliance with the terms hereof and, in AHFC's sole discretion, to the following additional conditions precedent:

- 8.1 **Truth and Accuracy.** The truth and accuracy, as of the Effective Date of this Loan Agreement, of all representations and warranties made herein by Borrower and the receipt by AHFC of such documents, certificates of officers of Borrower, and such other evidence, as AHFC reasonably shall have requested respecting the meeting of these conditions.
- 8.2 **Receipt of Documents.** The receipt by AHFC from Borrower of the additional Loan Documents executed by Borrower and copies of all other documents required in connection with this Loan Agreement and the transactions contemplated thereby, or respecting the business and affairs of Borrower, that AHFC may reasonably have requested.
- 8.3 **Effective Date of Agreement.** The receipt by AHFC from Borrower of the Loan Documents, each dated effective the same date as this Loan Agreement, executed by Borrower, satisfactory in form and substance to AHFC and certified, when appropriate, by proper corporate officers and Governmental Authorities.
- 8.4 Reserved.
- 8.5 **Receipt of Title Policy.** The receipt by AHFC of a mortgagee's title policy covering the Property free and clear of all liens and other encumbrances other than the Superior Lien or Superior Liens.
- 8.6 **Payment of Closing Costs.** The payment by the Borrower of all closing costs and expenses.

Section 9 APPLICATION OF PROCEEDS.

- 9.1 **Purpose of Loan.** Borrower agrees that it will apply the funds received by it under this Loan Agreement solely for the purpose set forth in Section 2 of this Loan Agreement.
- 9.2 **Payment of Additional Project Costs.** Borrower agrees to provide additional, unencumbered funds to pay all additional project costs incurred as a result of cost overruns or unanticipated expenses necessary to complete the Project according to the terms and conditions of this Loan Agreement.

Section 10 CONDITIONS OF LOAN AND DISBURSEMENT OF LOAN PROCEEDS. The making of the Loan and each disbursement of the Loan Proceeds hereunder shall be subject to the following conditions precedent:

- 10.1 **True and Correct Statements.** All of the representations and warranties contained in the Loan Documents shall be true and correct in all material respects on and as of the Date of this Loan Agreement and continuing to be true and correct on the date of each disbursement of a payment.

- 10.2 **Satisfactory Form of Documents.** All actions undertaken in connection with the transaction contemplated by the Loan Documents and all documents incidental thereto shall be satisfactory in form, scope and substance to AHFC, and AHFC shall have received copies of all documents which it may have requested in connection with said transaction in form, scope and substance reasonably satisfactory to it.
- 10.3 **Approvals and Consents.** All necessary approvals or consents, if any such approvals or consents are required of Governmental Authorities having jurisdiction with respect to the construction herein contemplated, shall have been obtained, and failure to have obtained prior to the issuance of the Certificate of Occupancy such consents shall constitute a default hereunder.
- 10.4 **Corporate Authority.** If Borrower, or entity constituting part of Borrower, or any guarantor of the Loan to be made hereunder, is a corporation, there shall be delivered to AHFC (with respect to each such corporation, if there be more than one) a copy of the record(s) of minutes of the Board of Directors of each such corporation specifically authorizing its officers to execute this Loan Agreement and all other Loan Documents necessary for the consummation of this transaction. The Secretary or Assistant Secretary of such corporation(s) shall certify the record(s) of the minutes of the Board of Directors to be true.
- 10.5 **Approvals of other parties.** All necessary approvals, releases, or consents required with respect to this transaction by any mortgagee or other party having any interest in the Property shall have been obtained, and failure to have obtained such consents shall constitute default hereunder.
- 10.6 **Good Standing.** None of the following exists:
- 10.6.1 an Event of Default; or
 - 10.6.2 the requested funds, plus the sum of (i) previous released Loan Proceeds (including retained amounts deemed to have been advanced) and (iii) other sums disbursed by AHFC under this Loan Agreement exceeds the total authorized Loan Amount evidenced by the Note; or
 - 10.6.3 an order or decree in any court of competent jurisdiction enjoins or prohibits Borrower, any person or AHFC or any of them from performing their respective obligations under this Loan Agreement; or
 - 10.6.4 any cost or portion thereof with respect to the Project which:
 - 10.6.5 has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Borrower's own funds; or
 - 10.6.6 was incurred prior to the effective date of this Loan Agreement or after the maturity date specified in the Note, unless specifically authorized in writing by AHFC; or was incurred other than in material accordance with the terms of this Loan Agreement, including all exhibits attached hereto and the Legal Requirements; or
 - 10.6.7 has not been billed to AHFC on or before the earlier of (i) 60 calendar days following billing to Borrower, or (ii) within 90 calendar days following termination of this Loan Agreement; or

10.6.8 is incurred with respect to any activity of Borrower after AHFC has requested that Borrower furnish data concerning such action prior to proceeding further, unless and until Borrower was thereafter advised by AHFC to proceed.

Section 11 DISBURSEMENT OF LOAN. This loan will be used for infrastructure costs related to the Project and Loan Proceeds will be disbursed in accordance with the progress of the development of the Project. Borrower shall submit all required documentation to support the costs incurred and to document the progress of Project.

Section 12 ALLOWABLE COSTS.

12.1 **Incurred in Performance of Agreement.** Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Loan Agreement and in conformance with the standards and provisions of the Obligations and the Approved Budget. Under no circumstances shall any portion be used for any purpose other than the payment of those costs and fees approved by the AHFC as legitimately relating to the cost of completing the work required by this Loan Agreement, or for an amount in excess of the amount authorized to be paid Borrower in the Approved Budget unless otherwise agreed to in writing by the AHFC.

Section 13 SECURITY. Borrower shall execute and deliver to AHFC at closing of the Loan the Deed of Trust, Security Agreement and Financing Statement as security for payment of the Note and performance of the Obligations under the Loan Documents. The Note and Deed of Trust, Security Agreement and Financing Statement shall be in a form satisfactory to AHFC and shall provide that, in the event of default by the Borrower in the payment of the Indebtedness or the performance of any Obligation, AHFC may, at its sole option, in addition to all other remedies, take possession of the Collateral given as security, provided AHFC has given Borrower the right to cure the default as provided in subsection 21.2 of this Loan Agreement and such default is continuing.

Section 14 REPRESENTATIONS. In order to induce the AHFC to make the Loan hereunder Borrower represents and warrants as follows:

14.1 **No Litigation.** Except as disclosed in writing to AHFC, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Borrower, any Signatory Party, or involving the Property, (ii) outstanding or unpaid judgments against Borrower, any Signatory Party, or the Property, or (iii) defaults by Borrower with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator. Borrower or any Signatory Party are not a party to any action, suit or proceeding pending or concluded, nor, to the knowledge and good faith belief of the Borrower, is Borrower or any Signatory Party threatened with any suit or proceedings which may bring into question the validity of the transaction herein contemplated or might result in any adverse change in the business or financial condition of the Borrower or any Signatory Party from that evidenced by the

financing statement provided to AHFC by Borrower or any Signatory Party at or before closing.

- 14.2 **No Bankruptcy.** No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or any Signatory Party or, to the best knowledge, information, and belief of Borrower or any Signatory Party, against Borrower or any Signatory Party or by or against any endorser, cosigner or guarantor of the Note.
- 14.3 **Legal Authority.** Borrower represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Loan Documents. The person(s) executing the Loan Documents on behalf of Borrower represents and warrants that they have been fully authorized by Borrower to execute the Loan Documents on its behalf and to bind Borrower legally to all the terms, performances and provisions of the Loan Documents. If there is a dispute as to the legal authority of either Borrower or of the person signing the Loan Documents to enter into the Loan Documents, AHFC shall have the right, at its option, to either temporarily suspend or permanently terminate this Loan Agreement. If AHFC has suspended or terminated this Loan Agreement for the reasons enumerated in this subsection 14.3, Borrower is liable to AHFC for any money it has received from AHFC for performance of this Loan Agreement.
- 14.4 **No Default.** Borrower or any Signatory Party is not in default on any obligations, covenants, or conditions contained in any bond, debenture, note, or other evidence of indebtedness or any mortgages or collateral instruments securing the same. Borrower also covenants that the making of this Loan Agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in any breach or constitute a default under any agreement to which Borrower or any Signatory Party is presently a party, or result in the creation of any lien, charge or encumbrance upon any of its property or its assets other than may be specifically allowed under the Loan Documents including without limitation the AHFC's liens and security interests.
- 14.5 **No Assignment.** Borrower and each Signatory may not assign this Loan Agreement or any other Loan Document or any of Borrower's or Signatory's rights under it without AHFC's prior written consent, and any attempted assignment is void.
- 14.6 **Taxes.** Borrower and each Signatory Party have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor any Signatory Party knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Borrower and each Signatory Party believe that their respective tax returns properly reflect the income and taxes of Borrower and each Signatory Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal

Revenue Service or other applicable tax authority upon audit. Borrower or any Signatory Party shall promptly and completely file all tax returns which are required and has made or will make provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Borrower or any Signatory Party. Borrower or any Signatory Party covenants that no tax liability has been asserted against Borrower or any Signatory Party by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Borrower or any Signatory Party knows of no basis for any such deficiency assessment.

- 14.7 **Correct Information.** In the event reports required to be submitted by Borrower pursuant to this Loan Agreement, are deemed by AHFC to be incomplete or unsatisfactory, Borrower agrees to make such revisions or changes as may be required by AHFC and at no additional cost to AHFC.
- 14.8 **Mailing Address.** Borrower's mailing address, as set forth in subsection 21.1 of this Loan Agreement or as changed pursuant to the provision hereof, is true and correct.
- 14.9 **No Reliance on AHFC.** Borrower is experienced in the ownership and operation of properties similar to the Property, and Borrower and AHFC have and are relying solely upon Borrower's expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on AHFC's expertise or business acumen in connection with the Property.
- 14.10 **Environmental and Hazardous Substances.** Without regard to whether AHFC has, or hereafter obtains, any knowledge or report of the environmental condition of the Property:
 - 14.10.1 The Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.
 - 14.10.2 Without limiting subsection 14.10.1 immediately preceding, the Property and operations conducted thereon by the current owner or operator of such Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any Governmental Authority or non-governmental entity or person or to any remedial obligations under any Environmental Law.
 - 14.10.3 All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed.
 - 14.10.4 The Property does not contain any Hazardous Substance.

- 14.10.5 Borrower has taken all steps necessary to determine and has determined that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.
- 14.10.6 Borrower has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, in, under, from or about the Property of any Hazardous Substance or the transportation to or from the Property of any Hazardous Substance.
- 14.10.7 There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges or is investigating any alleged presence, release, threat of release, placement on, in, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Property, or the transportation to or from the Property, of any Hazardous Substance.
- 14.10.8 Borrower has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, in, under, from or about the Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under, from or about the Property, or the transportation to or from the Property, of any Hazardous Substance.
- 14.10.9 There have been no communications or agreements with any Governmental Authority or any private entity, including, but not limited to, any prior owners or operators of the Property, relating in any way to the presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under or about the Property, or the transportation to or from the Property, of any Hazardous Substance.
- 14.10.10 Neither Borrower nor, to the best knowledge, information and belief of Borrower, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever caused, permitted, authorized or suffered, and Borrower will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, in, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Borrower in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part

thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

- 14.10.11 Borrower has been issued all required federal, state, and local licenses, certificates, or permits relating to the Property, and Borrower and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental, health, or safety matters.
- 14.11 **Separate Tax Parcel; Legal Lot.** The Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot or lots under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.
- 14.12 **Location of Property.** The Land is located wholly within the corporate limits of the City of Austin, Texas.
- 14.13 **Utilities Access.** All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements; all streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Borrower; all curb cuts, driveways and traffic signals shown on the survey delivered to AHFC prior to the execution and delivery of this Loan Agreement are existing and have been fully approved by the appropriate Governmental Authority.

Section 15 AFFIRMATIVE COVENANTS. Until payment in full of the Note and all of the other payments due AHFC hereunder, and the performance of all of the terms, conditions and provisions of the Loan Documents, and, with respect to any Restrictive Covenant required by this Loan Agreement, during the Restricted Period, Borrower and its assigns shall cause the following to be done:

- 15.1 **Compliance Information.** Borrower will deliver to AHFC within ten (10) calendar days after its receipt of any written request therefor, such information as the AHFC may reasonably determine in its sole discretion necessary to determine whether the Borrower is complying with its covenants and agreements contained in the Loan Documents or whether an Event of Default has occurred. So long as Borrower commences the process of obtaining such information and notifies AHFC of such action within the ten (10) calendar day period and proceeds diligently toward obtaining such information, Borrower

shall have an additional twenty (20) calendar days to furnish such information to AHFC.

- 15.2 **Work Required.** Borrower will perform or cause to be performed the work described in this Loan Agreement with respect to the Project, including, without limitation, the work described in the **Exhibit "B"** (Statement of Work and Budget).
- 15.3 **[Reserved.]**
- 15.4 **Subcontracting.** Borrower agrees that any work or service which is allowed to be subcontracted under this Loan Agreement shall be subcontracted by written contract or agreement and shall be subject by its terms, unless specific waiver is granted, in writing, by AHFC, to each and every provision of this Loan Agreement. Borrower agrees to assume the responsibility for performance and financing compliance by a subcontractor under this Loan Agreement.
- 15.5 **No Obligation to Others.** AHFC shall not be obligated or liable under this Loan Agreement to any party other than Borrower for payment of any monies or for provision of any goods or services.
- 15.6 **Payment of Amounts Due.** Subject to the provisions of Section 19 of this Loan Agreement, Borrower will pay punctually and fully each installment payment of principal and interest to become due on the Note in accordance with the terms of this Loan Agreement and the Note.
- 15.7 **Payment of Impositions.** Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Borrower shall deliver to AHFC a written receipt evidencing the payment of the respective Imposition, except that Borrower shall not be required to pay any such Impositions so long as the validity thereof shall be actively contested in good faith by proper proceedings, provided that any such Imposition shall be placed in escrow during such proceedings and shall be paid forthwith upon a final adjudication and order to pay from a court of competent jurisdiction.
- 15.8 **Payment for Labor and Materials.** Borrower will promptly pay all bills for labor, materials, supplies, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill.
- 15.9 **Payment of Other Amounts.** Borrower will pay the installments due on all indebtedness with respect to the Property to any other lenders, either heretofore or hereafter incurred or assumed by it when and as the same shall become due and payable, and will observe, perform and discharge all of the covenants, conditions and obligations which are imposed on it by any and all agreements securing or evidencing any encumbrance upon the Property securing this Loan so as to prevent an occurrence of any act or omission which, under the

provisions thereof, may be declared to be a default thereunder which, could result in a lien being placed upon the Property. In the event any such payment is not paid, Borrower will immediately provide notice to AHFC describing such default. However, giving such notice will in no way waive any other covenant in the Loan Documents.

- 15.10 **Payment of Borrower Expenses.** Subject to the provisions of Section 19 of this Loan Agreement, Borrower will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by AHFC or Trustee to third parties incident to this Loan Agreement (including without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Documents and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Documents, the making of any advance under the Note, and any suit to which AHFC or Trustee is a party involving the Deed of Trust, the Loan Documents or the Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of AHFC under any of the Loan Documents, and including without limitation:
- 15.11 **Expenses.** Borrower will pay all costs and taxes that might be imposed or be determined to be payable in connection with the execution, issuance or delivery of the Loan Documents, or in connection with any modification, amendment or alteration of the terms and provisions thereof, and to hold AHFC and any other holder of the Note harmless against any and all liability with respect to the Loan Documents, all of which agreements of Borrower shall survive payment of the Note.
- 15.12 **Loan Expenses.** If required by AHFC, Borrower will pay in addition to any other amounts a monthly servicing fee due with each installment payment in an amount stated in the Note.
- 15.13 **Expenses of Collection or Enforcement.** If Borrower shall at any time default in making any payment on the Note, Borrower will, to the full extent permitted by law, pay to the holder of the Note, in addition to any other amounts that may be due from Borrower to such holder, an amount equal to the reasonable costs and expenses of collection including reasonable attorney's fees, court costs or enforcement costs incurred by holder in such collection.
- 15.14 **Expenses of Correction by AHFC of Default.** In the event of any default by Borrower in the full performance or observance of any covenant or agreement contained in any of the Loan Documents, AHFC may, upon notice to Borrower at the address and in the manner specified in subsection 21.1 of this Loan Agreement, at AHFC's sole option (but without any obligation of AHFC to do so), take such steps as reasonably may be deemed by AHFC in its sole discretion, necessary or appropriate to correct or remedy such default in whole or in part, and all costs and expenses incurred by AHFC in taking such steps (including reasonable attorney's fees and court costs) shall, subject to an opportunity to cure such default as provided by subsection 21.2 of this Loan

Agreement, be due and payable by Borrower, with interest thereon from time of incurrence thereof by AHFC at the Maturity Rate stated in the Note. The taking of such action shall not be deemed to be a waiver by AHFC of the default of Borrower or a waiver of any other available right or remedy by reason of such default.

- 15.15 **Expenses of Amendments, Waiver, Consents, and Refinancing.** In the event Borrower proposes to take or omit to take any act or action prohibited or required by any provision of the Loan Documents, and Borrower requests AHFC to consent thereto or waive compliance with any such provision, then, in each such case, Borrower will reimburse or pay to AHFC any reasonable expenses incurred by AHFC in connection with such consent or waiver, or such modification or amendment.
- 15.16 **Excess Payments.** Borrower shall refund to the AHFC within ten (10) working days of the AHFC's request, any sum of money which has been paid by the AHFC and which the AHFC at any time thereafter determines:
- 15.16.1 has resulted in overpayment to Borrower; or
- 15.16.2 is not supported by adequate documentation to fully justify the expenditure.
- 15.17 **Repair.** Borrower will keep the Property in reasonably good order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Borrower will prevent any act, occurrence, or neglect, which might impair the value or usefulness of the Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Borrower shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in subsection 16.2 hereof; provided, however, that in instances where such emergency measures are to be taken, Borrower will notify AHFC in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.
- 15.18 **Protection of Lien Status.** Borrower will protect and preserve the lien and security interest status of the Security Agreements on the date of execution of this Loan Agreement and will not permit to be created or to exist in respect of the collateral or any part thereof, unless agreed to in writing by AHFC, any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof.
- 15.19 **Insurance.** Prior to commencing work with respect to the Property, Borrower, in accordance with the Insurance Requirement and at Borrower's own expense, will obtain, maintain and keep in full force and effect insurance coverages upon

and relating to the Property with such insurers, in such amounts, in such manner, provide such notices and covering such risks as shall be requested by and satisfactory in writing to AHFC. Borrower agrees to procure such required insurance coverages and deliver evidence of such coverages to AHFC as required by the Insurance Requirement. In the event any insurance proceeds with respect to a policy described in the Insurance Requirement are paid, such proceeds thereof shall be paid to AHFC to satisfy the balance owing on the Note at the time of the loss; the remainder of the insurance proceeds to be payable to Borrower. If the proceeds of the insurance together with such other funds as are available to Borrower are sufficient to pay for the restoration of the premises, Borrower may apply such funds to such restoration, provided the procedure to release such insurance proceeds for restoration are agreed to in writing between Borrower and AHFC. It is expressly understood and agreed that the Insurance Requirement represents AHFC's minimum requirements. Further, (i) the insolvency, bankruptcy or failure of any insurance company covering Borrower or the Property, (ii) the failure of any insurance company to pay claims occurring, or (iii) any exclusion from or insufficiency of coverage will not limit the amount of recovery AHFC may have in the event of casualty, damage or other occurrence giving rise to a claim under the insurance provided by Borrower under this Loan Agreement.

15.20 Bonding Requirements.

15.20.1 Bonds, when required in the Statement of Work, must be executed on forms furnished by or acceptable to AHFC. If required, Borrower shall furnish AHFC proof of an adequate bond prior to the earlier of (i) thirty (30) calendar days following the Effective Date of this Loan Agreement or (ii) payment of any Loan Proceeds to Borrower by AHFC under this Loan Agreement.

15.20.2 If the surety on any bond furnished by Borrower is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of subsection 15.20.3 of this Loan Agreement, Borrower must substitute immediately another bond and surety, both of which must be acceptable to AHFC.

15.20.3 When Performance Bonds and/or Payment Bonds are required in accordance with this Loan Agreement, each bond must be issued in an amount of one hundred percent (100%) of the Note, as security for the faithful performance of all of Borrower's obligations under this Loan Agreement. Performance Bonds and Payment Bonds must be issued by a solvent surety company authorized to do business in the State of Texas, U.S. Treasury listed, and with an A.M. Best rating of A- or better, or otherwise acceptable to AHFC.

15.21 Condemnation. Borrower will pay, or assign if requested by AHFC, to AHFC to satisfy the balance owing on the Note at the time of receipt of all amounts payable to or received by Borrower from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. If the amounts

payable to or received by Borrower through the actions described in this subsection 15.21, together with such other funds as are available to Borrower, are sufficient to pay for the restoration of the premises, Borrower may apply such funds to such restoration after receiving written concurrence from AHFC.

- 15.22 **Enforcement of Leases.** Borrower shall (i) submit any and all proposed Leases to AHFC for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under the Leases, (iii) maintain the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with the Leases, (v) deliver to AHFC true, correct and complete copies of the Leases, and (vi) deliver to AHFC such further information, and execute and deliver to AHFC such further assurances and assignments, with respect to the Leases as AHFC may from time to time request. Without AHFC's prior written consent, Borrower shall not (v) do or knowingly permit to be done anything to impair the value of any of the Leases, (w) except for security or similar deposits, collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (x) discount any future accruing Rents, (y) amend, modify, rescind, conceal, surrender or terminate any of the Leases, or (z) assign or grant a security interest in or to any of the Leases and/or Rents except for Permitted Exceptions in the Deed of Trust.

- 15.23 **Environmental and Hazardous Substances.** Borrower will:

- 15.23.1 not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, in, under, from or about the Property or transport to or from the Property any Hazardous Substance or allow any other person or entity to do so;
- 15.23.2 keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law;
- 15.23.3 establish and maintain, at Borrower's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators of the Property, which system shall include annual reviews of such compliance by employees or agents of Borrower who are familiar with the requirements of the Environmental Laws and, at the request of AHFC no more than once each year prior to issuance of a Certificate of Occupancy and once every five years thereafter, a detailed review of such compliance of the environmental condition of the Property (the "Environmental Report") in scope satisfactory to AHFC by an environmental consulting firm approved in advance by AHFC; provided, however, that if any Environmental Report indicates any violation of any Environmental Law or a need for Remedial Work, such system shall include at the request of AHFC a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Borrower shall furnish an Environmental Report or such Supplemental Report to AHFC within sixty (60)

calendar days after AHFC so requests, together with such additional information as AHFC may reasonably request.

- 15.24 **Notice of Hearings.** Borrower will give AHFC prior notice, in writing, of any public hearing or meeting before any Governmental Authority which may, in any manner, affect the Property.
- 15.25 **Inspection of Books and Records.** Borrower shall allow AHFC from time to time to inspect all books and records relating to Borrower's financial condition and to the Indebtedness, and to make and take away copies of such books and records. If Borrower is a corporation, limited liability company, partnership, joint venture, trust or other type of business association, Borrower shall provide Monitors with any and all financial statements and other documents and make any and all disclosures to Monitors with respect to any of the Constituent Parties, as Borrower is required to provide and make, and in the manner required to be provided and made, with respect to Borrower pursuant to this subsection 15.25.
- 15.26 **Monitoring, Inspection and Audit.** Borrower will permit AHFCs to enter the Land and Improvements at all reasonable times, and inspect the Property with or without prior notice to Borrower. AHFC will have the right, at all reasonable hours and without causing any unreasonable interruption to the operations of Borrower, to carry out monitoring and evaluation activities to ensure adherence by Borrower to the provisions of this Loan Agreement and to ensure that the use of any Loan Proceeds paid to Borrower are for eligible purposes in accordance with the Legal Requirements, to inspect and audit all books, accounts, reports, files, records, contracts, and all other papers relating to the Property, the Project or the use of Loan Proceeds; and to be given free access to the Property for the purpose of such monitoring, inspection or audit and also for the purpose of determining the condition of the premises. In addition, Borrower shall provide to AHFC such audited management letters or financial statements as the AHFC may require in their sole discretion.
- 15.27 **Property Reports.** With respect to the Project, Borrower will maintain full and accurate books of account and other records reflecting the results of the operations of the Property and will furnish, or cause to be furnished, to AHFC: (i) on or before January 31 of each calendar year during the term of this Loan Agreement, an Annual Compliance Certificate, (ii) immediate notice of any material adverse change in the Property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement, (iii) all reports required by the Statement of Work, and (iv) upon request of Monitors, and at Borrower's expense, such other operating, financial, insurance coverage and credit information as Monitors may reasonably request with respect to the Property. At any time and from time to time Borrower shall deliver to Monitors such other financial data as Monitors shall reasonably request with respect to the ownership, maintenance, use and operation of the Property, and Monitors shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Borrower's books of account and records relating to the Property to enable the Monitors to comply with its record keeping and reporting obligations and to determine the

level and adequacy of the Borrower's compliance with this Loan Agreement, all of which shall be maintained and made available to Monitors for such purpose at the address specified herein for Borrower or at such other location as AHFC may approve. Upon Monitors' request, Borrower shall also furnish Monitors with convenient facilities and all books and records necessary for an audit of such statements.

- 15.28 **Annual Inventory.** Borrower agrees to provide AHFC during the term of this Loan Agreement with an inventory of the real and personal property acquired in connection with this Loan Agreement no later than October 31 and within thirty (30) calendar days following the termination date of this Loan Agreement. Borrower shall maintain adequate accountability and control over such property, maintain adequate property records in a form acceptable to AHFC, and perform an annual physical inventory which shall be submitted to AHFC on or before October 31 of each year during the term of this Loan Agreement.
- 15.29 **Tax.** If at any time any law shall be enacted imposing or authorizing the imposition of any tax any rights, titles, liens, or security interests created by the Loan Documents, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Borrower will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay the Indebtedness in full within sixty (60) calendar days after demand therefor by AHFC.
- 15.30 **Statement of Unpaid Balance.** At any time and from time to time, Borrower will furnish promptly, upon the request of AHFC, a written statement or affidavit, in form satisfactory to AHFC, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.
- 15.31 **Borrower's Meetings.** Upon request of AHFC, Borrower shall inform AHFC of the dates and times of meetings of its governing body. Such notice shall be delivered to AHFC in a timely manner to give adequate notice and shall also include an agenda and a brief description of the matters to be discussed. Upon request of AHFC, minutes of meetings of Borrower's governing body shall be submitted to AHFC within fifteen (15) calendar days of such request. If Borrower utilizes advisory board(s), notices of meetings and formal minutes of advisory board meetings shall be kept and shall remain on file with Borrower for AHFC's inspection.
- 15.32 **Confidentiality.** Upon authorization from AHFC to render client files anonymous, Borrower agrees to mask client-identifying information in such way that said marking will not in any way obstruct AHFC's monitoring and evaluation duties. Borrower agrees, at all times, to keep confidential all client and personnel identifying information and any information received by Borrower unless required by law to release such information.

- 15.33 **Personnel Policies.** In the event the number of full-time employees of Borrower equals five (5) or more, personnel policies shall be established by Borrower in writing and shall be available for examination by AHFC. Such personnel policies, taken as a whole, shall be no more liberal than AHFC's personnel policies, procedures, and practices, including, without limitation, policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits (health and hospitalization, retirement, etc.), vacation and sick leave privileges, and travel.
- 15.34 **Conflict of Interest.**
- 15.34.1 Borrower covenants that neither it nor any member of its governing body presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Loan Agreement. Borrower further covenants that in the performance of this Loan Agreement no person having such interest shall be employed or appointed as a member of its governing body.
- 15.34.2 Borrower further covenants that no member of its governing body or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others; particularly those with which they have family, business, or other ties.
- 15.34.3 No officer, member, or employee of AHFC and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall (i) participate in any decision relating to this Loan Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has a direct or indirect interest, or (ii) have any interest, direct or indirect, in this Loan Agreement or the proceeds thereof.
- 15.35 **Nepotism.** Borrower shall not employ in any paid capacity any person who is a member of the immediate family of: (i) a person who is currently employed by Borrower, or (ii) a current AHFC employee who has discretionary authority with respect to this Loan Agreement, or (iii) a member of the AHFC or Borrower's governing body, without prior written approval by AHFC. The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, first cousin, stepparent, stepchild, half-brother, and half-sister.
- 15.36 **Contract Close Out.** The contract close out package, together with a final Payment Request, for the time period covered by the last invoice requesting a disbursement of Loan Proceeds, shall be submitted by Borrower to the AHFC with respect to the Project within ninety (90) calendar days following the close of the term of this Loan Agreement, unless extended in writing by the AHFC, using the format as provided to Borrower by the AHFC.

- 15.37 **Audit.** Borrower agrees to submit to AHFC a complete set of audited financial statements and the auditor's opinion and management letters covering Borrower's fiscal year until the termination of this Loan Agreement and the Promissory Note.
- 15.37.1 Borrower, at its expense, shall contract with an independent auditor utilizing a Letter of Engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.
- 15.37.2 Prior to the start of the audit, a letter of engagement between Borrower and their auditor, which details the services to be provided, including the audit requirements of this subsection 15.37.2 must be executed. Borrower must provide AHFC two (2) copies of a complete financial audit and the auditor's opinion and management letters within one hundred-eighty (180) calendar days following the end of each Borrower Fiscal Year, unless AHFC approves alternative arrangements in writing.
- 15.37.3 Borrower must provide AHFC with annual audits as required by this subsection 15.37 until termination of this Loan Agreement, unless waived by AHFC.
- 15.37.4 The expiration or termination of this Loan Agreement shall in no way relieve Borrower of the requirement to complete the above audit requirements in the manner set forth.
- 15.38 **[Reserved.]**
- 15.39 **Disclosures.** If at any time Borrower shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Borrower shall promptly notify AHFC of the existence or occurrence thereof, unless AHFC has actual notice thereof, and of Borrower's opinion as to what effect such may have on the Property or Borrower. Borrower shall also give prompt notice to AHFC, unless AHFC has actual notice thereof, of (i) the serious illness or death of any principal or key employee of Borrower, (ii) any litigation or dispute, threatened or pending against or affecting Borrower, a Signatory Party, or the Property which could have a Material Adverse Effect, (iii) any Event of Default, (iv) any default by Borrower or any acceleration of any indebtedness owed by Borrower under any contract to which Borrower is a party which could have a Material Adverse Effect, and (v) any change in the character of Borrower's business as it existed on the date hereof which could have a Material Adverse Effect.
- 15.40 **Filing Documents.** Borrower will file for record the Deed of Trust that secures the Note.
- 15.41 **Delivery of Contracts.** Borrower will deliver to AHFC a true, correct and complete copy of each Contract within five (5) calendar days after the execution of it by all parties thereto. Within twenty (20) calendar days after a request by AHFC, Borrower shall prepare and deliver to AHFC a complete listing of all Contracts, showing date, term, parties, subject matter, whether any defaults exist, and other information specified by AHFC, of or with respect to each of

such Contracts, together with a true, correct and complete copy thereof (if so requested by AHFC).

- 15.42 **Further Assurances and Corrections.** From time to time, at the request of AHFC, Borrower will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Loan Agreement or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, amendments to this Loan Agreement, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in AHFC's opinion, to carry out more effectively the purposes of this Loan Agreement and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by AHFC in AHFC's sole discretion to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

Section 16 NEGATIVE COVENANTS. Borrower hereby unconditionally covenants and agrees with AHFC until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

- 16.1 **Use Violations.** Borrower will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Property in any manner which (i) violates any Legal Requirement, (ii) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (iii) constitutes a public or private nuisance, or (iv) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.
- 16.2 **Waste: Alterations.** Borrower will not commit or permit any waste or impairment of the Property and will not (subject to the provisions of subsection 7.4 hereof) without the prior written consent of AHFC, make or permit to be made any alterations or additions to the Property of a material nature.
- 16.3 **Replacement of Fixtures and Personalty.** Borrower will not, without the prior written consent of AHFC, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for purposes of maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest except as may be approved in writing by AHFC.
- 16.4 **No Drilling.** Borrower will not, without the prior written consent of AHFC, permit any drilling or exploration for or extraction, removal, or production of,

any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

- 16.5 **Additional Obligations.** Borrower shall not create or incur any additional liability, whether contingent or non-contingent, with respect to the Property that is secured by a lien on the Property, except as specifically allowed or contemplated pursuant to the Loan Documents or, in writing, by the AHFC.

Section 17 **EVENTS OF DEFAULT.**

- 17.1 The principal indebtedness evidenced by the Note or the unpaid balance thereof at the time outstanding, shall be due and payable at the election of the AHFC if any one or more of the following events shall occur for any reason whatsoever, and whether such occurrences shall be voluntary, involuntary or come about or be effected by operation of law, or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or Governmental Authority and is not cured or corrected within the times and in the manner required to cure or correct such event of default by Borrower as required by subsection 21.2 of this Loan Agreement:

- 17.1.1 **Payment of Indebtedness.** Default shall be made in the timely and complete payment (by payment or by credit as provided in the Note) of any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise; or
- 17.1.2 **False Representation.** Any representation or warranty made by the Borrower herein or any statement or representations made in any certificate, statement or opinion delivered to the AHFC pursuant to this Loan Agreement, the Note, or any other Loan Documents shall prove to have been incorrect in any material respect as of the date made; or
- 17.1.3 **Performance of Obligations.** Default shall be made in the performance or observance of any of the Obligations; or
- 17.1.4 **Default Under Other Lien Documents.** Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Property; or
- 17.1.5 **Abandonment.** Borrower abandons or removes all or substantially all of the Improvements, Personalty or Fixtures without written approval from the AHFC; or
- 17.1.6 **Discontinuance of Operations.** Borrower vacates, or discontinues operations of or from, any substantial portion of the Property without written approval from the AHFC; or
- 17.1.7 **Bankruptcy or Insolvency.** Borrower shall admit in writing its inability to pay its debts generally as they become due, make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for

the appointment of any receiver or trustee thereof or of any substantial part of its property or commence any proceedings under any arrangement, readjustment of debt, or statute of any jurisdiction, whether now or hereafter in effect; or there is commenced against Borrower any such proceeding which remains undismissed for a period of thirty (30) calendar days; or

- 17.1.8 **Receivership.** Borrower by any act indicates its consent to, approval of or acquiescence in any such proceeding or in the appointment of any receiver or of any trustee for Borrower with respect to a substantial part of its property; or
- 17.1.9 **Inability to Pay Judgment.** If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of \$10,000.00 shall be rendered against the Borrower concerning a claim filed with respect to the Property and not discharged within thirty (30) calendar days from the date of final disposition thereof including the exhaustion of all appellate rights; or
- 17.1.10 **Non-compliance with Loan Documents.** If Borrower defaults, breaches, or commits an event of default that is uncured pursuant to any other Loan Document; or
- 17.1.11 **Insurance not Maintained.** If Borrower does not keep in full force and effect or any agreement with a contractor of Borrower constructing Improvements or installing Personalty does not require such contractor to keep in full force and effect any insurance coverages required by the Insurance Requirement of this Loan Agreement.
- 17.2 Notwithstanding anything to the contrary contained herein or in the other Loan Documents, including without limitation the Note, AHFC agrees that if the holder of any loan insured by HUD or if HUD itself acquires ownership of the Property, then such holder or HUD, as applicable, may succeed to the interest of the initial Borrower with respect to this Agreement and the other Loan Documents and receive advances hereunder, subject to the terms and conditions of this Agreement and the other Loan Documents, provided that in no event shall this section be construed as obligating a successor in interest to the Borrower to take any action to continue construction of the Property.

Section 18 REMEDIES IN THE EVENT OF DEFAULT.

- 18.1 Upon the occurrences of any Event of Default as stated in Section 17 of this Loan Agreement AHFC may at any time, and without further notice take any or all of the following action:
 - 18.1.1 If Borrower fails to cure such Event of Default within the time period provided by subsection 21.2 of this Loan Agreement:
 - 18.1.2 demand repayment of the Note, and Borrower shall remit such amount to AHFC within ten (10) calendar days thereof;
 - 18.1.3 cancel, suspend or terminate payment of any funds due Borrower under this Loan Agreement;

- 18.1.4 cancel, suspend or terminate this Loan Agreement in whole or part;
 - 18.1.5 exercise control over the collateral pursuant to the Security Agreement; and
 - 18.1.6 pursue such other measures as may be lawful, including suing for specific performance, for the recovery of damages and for the release or return of all or part of the funds committed herein.
 - 18.1.7 If the Event of Default is material, in addition to the remedies described in Section 18 and any and all other rights, remedies and recourses available to it under any of the Loan Documents or otherwise available at law or in equity:
 - 18.1.8 suspend payment of any funds due the Borrower under this Loan Agreement;
 - 18.1.9 suspend the right of the Borrower to incur any additional obligations under this Loan Agreement in whole or part; or
 - 18.1.10 suspend the right of the Borrower to continue any performance under this Loan Agreement in whole or part.
- 18.2 Notwithstanding anything to the contrary contained herein or in the other Loan Documents, including without limitation the Note, AHFC agrees that if the holder of any loan insured by HUD or if HUD itself acquires ownership of the Property, then such holder or HUD, as applicable, may succeed to the interest of the initial Borrower with respect to this Agreement and the other Loan Documents and receive advances hereunder, subject to the terms and conditions of this Agreement and the other Loan Documents, provided that in no event shall this section be construed as obligating a successor in interest to the Borrower to take any action to continue construction of the Property.

Section 19 HOLD HARMLESS AND INDEMNITY.

- 19.1 **Injuries or Damages.** Borrower shall perform all duties hereunder as an independent contractor and any of its employees performing work required by this Loan Agreement shall be deemed solely employees of Borrower or its subcontractor. Borrower shall save and hold harmless AHFC, its officers, agents, and employees from any and all liability of any nature or kind on account of any claims, audit exceptions, demands, suits, or damages including reasonable attorneys' fees and court costs arising or resulting from injuries or damages sustained by any persons or property resulting in whole or in part from the performance or omissions of any employee, agent, or representative of Borrower.
- 19.2 **Any and All Liability.** Borrower undertakes to indemnify AHFC from any and all liability, loss or damages AHFC may suffer as a result of claims, demands, costs, or judgments against it arising out of the performance of the terms of this Loan Agreement, provided that for so long as the Project and Property is subject to a loan held or insured by HUD, any Borrower indemnity obligations shall be limited to Surplus Cash, as such term is defined in the Regulatory Agreement for Multifamily Projects by and between the Borrower

and HUD. It is agreed that any indemnity obligations herein or in any other document executed in connection herewith are personal to Borrower or any other party entering an indemnification agreement with Lender. In the event that HUD becomes a successor in interest to the Borrower, none of the indemnity obligations shall apply to, or be binding on, HUD.

Section 20 WAIVER OF NOTICE. The Borrower hereby expressly waive any requirement for presentation, demand, protest, notice of protest or other notice or dishonor of any kind, other than the notice specifically provided for in this Loan Agreement.

Section 21 Notices.

- 21.1 All notices, demands and communications provided for herein or made hereunder shall be delivered, or sent by certified mail, return receipt requested, addressed in each case as follows, until some other address shall have been designated in a written notice to the other party hereto given in like manner:

If intended for Borrower: Austin Habitat for Humanity, Inc.
Attn: Chief Executive Officer
500 West Ben White Boulevard
Austin, Travis County, Texas 78704

If intended for AHFC: AUSTIN HOUSING FINANCE CORPORATION
Attn: A&D Program Manager
1000 East Eleventh Street, #200
Austin, Travis County, Texas 78702

and shall be deemed to have been given or made when so delivered or mailed, except as herein otherwise expressly provided. Notification of a change of address shall be delivered to AHFC and Borrower within ten (10) calendar days of such change of address.

- 21.2 Notwithstanding anything herein contained in this Loan Agreement, the Note or the Loan Documents securing same to the contrary, it is agreed that AHFC shall not declare any amounts owing in the Note immediately due and payable if default is made in the payment of any installment of principal or interest thereon, as and when the same is or becomes due, unless any such default has not been fully cured within ten (10) calendar days after notice of such default shall have been given to Borrower and to the Limited Partner. Further, notwithstanding anything herein to the contrary, it is agreed that the AHFC shall not declare any amounts owing on the Note immediately due and payable in the event of a default or breach by Borrower of any of the covenants or obligations herein contained or contained in any instrument securing the payment of the Note or executed in connection herewith other than the covenant to timely pay installments of principal and interest on the Note, unless any such default has not been fully cured within thirty (30) calendar days after notice of such default or breach shall have been given to Borrower and to the Limited Partner; provided, however, if Borrower commences the process of

curing such default and notifies AHFC of such action within such thirty day period, or within any subsequent thirty day period, and proceeds diligently and continuously toward fully curing such default, Borrower shall have an additional period, in increments of thirty (30) calendar days each, up to ninety (90) calendar days to fully cure such default. Any such notice shall be given in writing and shall be deemed to be given three (3) calendar days after the date such notice is deposited, postage prepaid, via certified mail, return receipt requested, in the U.S. mail addressed to Borrower at the address set forth in subsection 21.1 of this Loan Agreement. Any cure tendered by Limited Partner shall be treated as a cure tendered by Borrower, and shall be accepted or rejected on the same terms as if the cure had been tendered by Borrower.

Section 22 SURVIVAL OF REPRESENTATIONS COVENANTS AND WARRANTIES. All representations, covenants and warranties contained herein shall survive the execution and delivery of the Loan Documents, any investigation at any time made by the AHFC or on its behalf, and any sale or transfer of the Loan Documents.

Section 23 ENTIRE AGREEMENT, CONSTRUCTION AND AMENDMENT. The Loan Documents constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. These Loan Documents may not be changed, amended or terminated orally but only by agreement in writing and signed by the party against whom enforcement of any change, amendment or termination is sought. Provided the amendment does not increase the Loan amount, the City Manager or the City Manager's designee is authorized to execute any amendment to the Loan Documents without further authorization by the AHFC Board of Directors.

Section 24 FORCE MAJEURE.

- 24.1 The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. Force Majeure does not include economic or market conditions which affect a party's cost, but not its ability, to perform.
- 24.2 Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.
- 24.3 The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in the manner and at the address set forth in subsection 21.1 of this

Loan Agreement, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible.

Section 25 PAYMENT. The Borrower will pay to AHFC at its notice address specified in subsection 21.1 of this Loan Agreement, or at such other address as it may designate in writing, all amounts payable with respect to the Loan Documents.

Section 26 LEGAL COUNSEL. The parties are each represented by legal counsel and have negotiated the Loan Documents with benefit of such counsel.

Section 27 SUCCESSOR AND ASSIGNS. All covenants, agreements, representations and warranties made in the Loan Documents or in certificates delivered in connection herewith shall, whether so expressed or not, bind and inure to the benefit of the successors and permitted assigns of the Borrower and AHFC.

Section 28 COUNTERPARTS. These Loan Documents may be executed in multiple originals.

Section 29 SEVERABILITY. In the event that any provisions of the Loan Documents or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of such provisions and agreements shall nevertheless remain in full force and effect; and to this end, the provisions of all covenants, conditions and agreements described herein are deemed severable for this purpose.

Section 30 NO WAIVER; REMEDIES CUMULATIVE. No exercise, partial exercise, failure, forbearance or delay on the part of the AHFC in exercising any power or right under the Loan Documents shall operate as a waiver of the power or right, except as specifically provided herein. No remedy conferred in the Loan Documents is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise, may be sought by the enforcing party.

Section 31 EXECUTION BY ADDITIONAL PARTIES. When any Signatory Party joins in the execution of any of the Loan Documents, said party has done so for the purpose of consenting to all of the terms and conditions in such instrument and agrees by such execution to be bound hereby.

Section 32 SURVIVAL OF OBLIGATIONS. All obligations of Borrower under the Loan Documents, which have not been fully performed, paid and satisfied at the termination of this Loan Agreement, shall survive the termination.

Section 33 ALTERNATIVE DISPUTE RESOLUTION. Initiation of any alternative dispute resolution under this Section 33 shall not relieve either party of its obligations under the Loan Documents regarding matters not disputed. Any agreement reached under this Section 33 shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

33.1 If a dispute arises out of or relates to the Loan Documents, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section 33 does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party

within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after the initial written request for a meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to Mediation as described in subsection 33.2. Negotiation as described in this subsection 33.1 may be waived by a written agreement signed by both parties, in which event the parties shall proceed directly to Mediation as described in subsection 33.2.

- 33.2 If the procedure to resolve the dispute through negotiation as described in subsection 33.1 fails or is waived in accordance with subsection 33.1, the parties agree to participate in Mediation in good faith for up to forty-five (45) calendar days immediately following the failure or waiver. The parties agree to pay the fees and expenses of the Mediation equally. In the event either party fails to reach resolution of the dispute through Mediation, then each party is released to pursue any other remedies available to each party.

Section 34 GOVERNING LAW. The Loan Documents shall be governed by and interpreted in accordance with the laws of the State of Texas. Although drafted by the AHFC, the Loan Documents shall be fairly construed, neither more strongly for nor against any party.

Section 35 PERFORMANCE VENUE. The Loan Documents shall be performed in Travis County, Texas. Venue shall be in Travis County, Texas.

EXECUTED AND DELIVERED effective as of the date first above written.

Borrower: **AUSTIN HABITAT FOR HUMANITY, INC.**

BY: 
NAME: PHYLLIS SNODGRASS
TITLE: Chief Executive Officer

AHFC: **AUSTIN HOUSING FINANCE CORPORATION**

BY: 
NAME: BERT LUMBRERAS
TITLE: Authorized Representative

Attached Exhibits:

- EXHIBIT A - Definitions
- EXHIBIT B - Statement of Work (plus attachments)
- EXHIBIT C - Insurance Requirements

PREPARED IN THE LAW OFFICE OF: City of Austin
Law Department

ACQUISITION AND DEVELOPMENT PROGRAM DEFINITIONS

Borrower: AUSTIN HABITAT FOR HUMANITY, INC.

Section 1 Advance: An advance of Loan Proceeds under the Loan Agreement to the Borrower from the Austin HFC for the reimbursement of expenditures in connection with the Project.

Section 2 Advances Account: The joint account into which Advances (but not Receipts) are deposited and against which checks are drawn as described in the Loan Agreement.

Section 3 Approved Budget: The budget setting forth the Borrower's expenses in connection with the Project and set forth in an attachment to the Statement of Work and by this reference incorporated in it, as the same may be amended from time to time with the Austin HFC's prior written consent.

Section 4 Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, P.L. 101-336, the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., the Architectural Barrier Act, 23 Tex. Rev. Civ. Stat. art. 9102, all as amended, or any successors thereto.

Section 5 Borrower: The entity identified at the beginning of these definitions and in the first paragraph of the Loan Agreement and any Signatory Party.

Section 6 Borrower Fiscal Year: Each one-year period ending on December 31 of each year during the term of the Loan Agreement, which period shall also be the fiscal year of the Mortgaged Property.

Section 7 CFDA #: The Catalog of Federal Domestic Assistance Programs number assigned by the federal government to a particular federal assistance program.

Section 8 C.F.R.: The Code of Federal Regulations.

Section 9 Certificate of Occupancy: The certificate issued by the appropriate Governmental Authority authorizing the occupancy of the Mortgaged Property following completion of the work described in the Statement of Work.

Section 10 City Ordinances: Any and all ordinances of the Austin City Code, provided any subsequently enacted ordinance does not unconstitutionally impair the rights of Borrower under the Loan Agreement.

Section 11 Commercial Code: The Uniform Commercial Code, Title 1, Texas Business and Commerce Code, as amended from time to time.

Section 12 Compliance Affidavit: The affidavit in a form acceptable to Austin HFC, executed by Borrower and evidencing payment of contractors and subcontractors with respect to a Draw Request Form.

Section 13 Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration advanced by the Austin HFC to the Borrower pursuant to the Loan Agreement, the receipt and sufficiency of which is acknowledged.

Section 14 Construction Monitoring Consultant: The Austin HFC employee or agent, compensated by Austin HFC, who will review the Contractor's records to verify that the work performed by Contractor is in accordance with the Obligations.

Section 15 Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under such contracts, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from such contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any such contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlement for water, wastewater, and other utility services whether executed, granted, or issued by a private person or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlement with respect to water, wastewater, and other utility services, certificates, licenses, zoning variance, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Borrower may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchaser; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Section 16 Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Section 17 Deed of Trust: That certain deed of trust conveying the Mortgaged Property to the Trustee in such form as is acceptable to the Austin HFC, dated even date with the Loan Agreement, incorporated herein by reference, executed by Borrower, and securing the payment of the Indebtedness and the performance and discharge of the Obligations for the benefit of Austin HFC.

Section 18 Demographic Report: The report required to be filed with the Austin HFC in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by Austin HFC which sets forth the racial, ethnic, income and gender data on Borrower's participants sufficient to report to HUD on the extent to which these categories of persons have participated in, or benefited from, the activities under the Loan Agreement, the Program Guidelines and the Statement of Work.

Section 19 Disposition: Any sale, lease (except as permitted under the Security Agreements), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

Section 20 Eligible Household: A "low- and moderate-income household" or a "low- and moderate-income person" as defined at 24 C.F.R. §570.3.

Section 21 Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("TWC") § 26.001 et seq.; Texas Health & Safety Code ("THSC") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time. The terms "release," "removal," "environment," and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the State of Texas establish a meaning for "release," "removal," "environment," or "disposal," which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Section 22 Event of Default: Any happening or occurrence described as an "Event of Default" in the Loan Agreement.

Section 23 Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, or installed in any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing

apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Section 24 Government Authority: Any and all applicable courts, boards, agencies, corporations, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Section 25 Hazardous Substance: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

Section 26 HUD: The United States Department of Housing and Urban Development.

Section 27 Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon any property, real, personal or mixed, or upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Section 28 Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof; including, without limitation, the construction by Borrower of the improvements described in the Statement of Work.

Section 29 Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or other Loan Documents, adjusted by such credits or forgiveness of amounts otherwise due as allowed in the Note or the other Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Austin HFC, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured by the Security Agreements (it being contemplated by Borrower and Austin HFC that such future indebtedness may be incurred); (iv) the Liquidated Damages; and (v) any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to Austin HFC, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Austin HFC by Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, and any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Borrower and Austin HFC that Borrower may hereafter become indebted to Austin HFC in further sum or sums. Notwithstanding the foregoing provisions of this definition, the Security Agreements shall not secure any such other loan, advance, debt, obligation or liability with respect to which Austin HFC is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Section 30 Insurance Requirement: The insurance coverages required to be maintained on the Mortgaged Property in an amount equal to the sum of (a) the amount of the Loan, plus (b) the amount of the Superior Loan, and described in **Exhibit "C"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 31 Land: All that certain real property or interest therein situated in the County of Travis, Texas, more particularly described in the Deed of Trust, together with all right, title, interest, and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Section 32 Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Section 33 Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws, Environmental Laws and HUD Law), rulings, rules, regulations, permits, certificates, or ordinances (including City of Austin Ordinances) of any Governmental Authority in any way applicable to Borrower, any Signatory Party or the Mortgaged

Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, construction, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, (iii) Borrower's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, (vi) the Federal Requirements, and (vii) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Mortgaged Property and to which Borrower may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements. Further, any changes in applicable statutes, rulings, rules, regulations, permitting certificates, or ordinances of any Governmental Authority or the Federal Requirements are automatically incorporated herein without specific reference.

Section 34 Loan: An amount equal to the principal sum payable in the Note or so much thereof as may be outstanding from time to time pursuant to the Loan Documents which Austin HFC agrees to lend to Borrower, and the Borrower hereby agrees to borrow from the Austin HFC and repay to, or as further described in the Note receive credit from, Austin HFC or its assigns.

Section 35 Loan Agreement: That certain Acquisition and Development Program Loan Agreement, entered into by and between Borrower and Austin HFC, and dated the Effective Date.

Section 36 Loan Documents: The Loan Agreement, the Note, the Security Agreements, the Restrictive Covenant Running with the Land, and any and all other documents now or hereafter executed by Borrower, or any other person or party in connection with the loan evidenced by the Loan Agreement or in connection with the payment of the Indebtedness or the performance or discharge of the Obligations.

Section 37 Loan Proceeds: The Loan amounts paid by Austin HFC to Borrower in accordance with the terms and conditions of the Loan Agreement.

Section 38 Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of Borrower, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower (or if Borrower is a partnership, joint venture, or other type of business association, of any of the parties comprising Borrower or of the ground lessor if the estate held by Borrower in the Land is a leasehold estate) to pay and perform the Indebtedness and the Obligations, respectively, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Section 39 Mediation: A forum in which an impartial Mediator facilitates communication between the parties to promote reconciliation, settlement or understanding among them. At a minimum process shall include: 1) conducting an on-site investigation, if the Mediator deems it necessary, appropriate, by the Mediator for fact gathering purposes, 2) a meeting of all parties for the exchange of points of view, and 3) separate meetings between the Mediator and each party to the dispute for the formulation of resolution alternatives.

Section 40 Mediator: A person selected in accordance with the provisions of the Loan Agreement trained in mediation skills. The person selected may also be a person who is trained in the subject matter of the dispute and/or a contract interpretation expert. The parties agree to act in good faith in the selection of the person and to give consideration to qualified individuals nominated by either party. If the parties fail to agree on a person within thirty (30) calendar days of initiation of the Mediation, the Mediator shall be selected by the Travis County Dispute Resolution Center.

Section 41 Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which may be now or in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Section 42 Monitors: HUD, Trustee and Austin HFC, and their respective agents, representatives, and employees.

Section 43 Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in the Loan Documents, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Section 44 Note: That certain promissory note in such form as is acceptable to the Austin HFC, dated even date with the Loan Agreement, incorporated herein by reference, executed by Borrower and, if applicable, guaranteed by one or more guarantors, and payable to the order of Austin HFC in the principal sum of the Loan, bearing interest as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified, finally maturing as stated in the note, and secured by, among other things, the Security Agreements; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or any promissory note or notes given in renewal, substitution or replacement therefor.

Section 45 Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, or any other person or party to the Loan Documents, to Austin HFC, Trustee, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Section 46 Performance Report: The report required to be filed with the Austin HFC in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by Austin HFC which sets forth Borrower's performance activities under the Loan Agreement, the Program Guidelines and the Statement of Work for the reporting period.

Section 47 Personalty: All of the right, title, and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letters of credit, inventory; (iii) all cash funds, fees (whether refundable, returnable or reimbursable), deposits or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any Governmental Authority, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Mortgaged Property, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Commercial Code (Chapter 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, and necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Section 48 Program Guidelines: The Acquisition and Development Program Loan Guidelines approved by the City of Austin on December 30, 2015, as may be amended from time to time, which describes the program requirements of the Project that is proposed to be financed by proceeds from the Loan.

Section 49 Project: New construction of as subdivision on approximately 14 acres location near Boyle Drive, Zachary Drive, and Farrell Glen Drive, Austin, Travis County, Texas, for the purpose of constructing no fewer than sixty (67) single-family residences, subject to future financing, as described in the Statement of Work.

Section 50 Receipts: Any receipt of funds (but not Advances) in connection with the Project.

Section 51 Rents: All of the rents, royalties, issues, bonus monies, revenues, income, proceeds, profits, security and other types of deposits (after Borrower acquires title thereto), and other benefits paid or payable by parties to the Leases (other than Borrower) for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Section 52 Restricted Period: The period beginning on the Effective Date and ending ten (10) years thereafter.

Section 53 Security Agreements: The Deed of Trust.

Section 54 Signatory Party: Any signatory to any of the Loan Documents that signs on Borrower's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Section 55 Statement of Work: The work required to be completed with respect to the Mortgaged Property which will be funded by the Loan and described in **Exhibit "B"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 56 Tax Code: The U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

Section 57 Trustee: The individual described as Trustee in the Deed of Trust.

Section 58 U.S.C.: The United States Code.

EXHIBIT B

EXHIBIT B
STATEMENT OF WORK AND BUDGET
Austin Habitat for Humanity, Inc. – Infrastructure Development
\$1,250,000 – General Obligation Bond funds & CDBG funds [CFDA #14.218]

- I. **BORROWER:** Austin Habitat for Humanity, Inc.
500 West Ben White Boulevard
Austin, Texas 78704
- II. **PROGRAM:** Acquisition and Development Program of the Austin Housing Finance Corporation, using General Obligation Bond funds and Community Development Block Grant (CDBG) funds

III. **PROJECT DESCRIPTION:**

In accordance with the Acquisition and Development (A&D) Program Guidelines attached as **Attachment 1** to this **Exhibit "B"** (Statement of Work and Budget), assistance is provided through a deferred-payment, forgivable loan in the amount of \$1,250,000, which will be comprised of \$460,000 General Obligation Bond funds, and \$790,000 CDBG funds. Loan proceeds funded using General Obligation Bond funding will be used for infrastructure development. Loan proceeds funded using CDBG funding will be used for infrastructure development on the property, and will meet the National Objective of Low-Mod Area Benefit activities. Upon completion of the infrastructure work and its acceptance by the City of Austin, the Borrower intends to construct on the property no fewer than sixty-seven (67) new single-family homes that will be sold to low- and moderate-income buyers.

IV. **PERFORMANCE REQUIRED**

1. **Homebuyer Eligibility.**

- **Income Targets.** The home constructed shall be sold to a household earning 80% of the MFI or below at the time the buyer signs a sales contract to purchase a home constructed under this agreement.
- **Income Determination Process.**
 - **Income Limits.** Habitat shall use the HUD median family income guidelines in effect at the time the purchase contract is signed and shall request the updated HUD income guidelines from AHFC in March of each year. The income limits in effect at the time of this contract amendment are included as **Attachment 1** to the Statement of Work.
 - **Calculation and Documentation Method.** Habitat will calculate annual gross income in accordance with 24 CFR Part 5. The Part 5 income calculation takes into account gross income and assets. The HUD website provides a helpful explanation and an on-line calculator that computes annual gross income using 24 CFR Part 5 at <http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>. The printed information from HUD's web site is included as **Attachment 2**.

- Timing. Habitat shall certify that the household is income-eligible at the time the sales contract with the homebuyer is signed.
 - Affidavit. As part of the income certification process, Habitat shall require each prospective homebuyer to complete and sign an **Income Eligibility Requirements and Applicant Affidavit** in the form of **Attachment 3**, certifying the accuracy of their annual household income, including the incomes of all individuals who will occupy the home. In addition, it requires the buyers to acknowledge their awareness of the restrictions that apply both to the purchase of the home and to the resale of the home within the Restricted Affordability Period.
 - Principal Residence. The homebuyer must intend to reside in the home as his or her principal dwelling within sixty days from the date the home is conveyed to the Eligible Household.
2. **Approved Budget & Eligible Use of Funds.** Funds drawn on this Loan shall not exceed \$1,250,000 and shall be drawn according to the budget as follows:
- | <u>Sources</u> | | <u>Uses</u> | |
|---------------------------------|--------------------|----------------------------|--------------------|
| General Obligation Bond funding | \$460,000 | Infrastructure Development | \$460,000 |
| CDBG Funding | <u>\$790,000</u> | Infrastructure Development | <u>\$790,000</u> |
| Total | \$1,250,000 | Total | \$1,250,000 |
5. **S.M.A.R.T. Housing.** The homes constructed on the Property must receive S.M.A.R.T. Housing™ certification and comply with the S.M.A.R.T. Housing standards. AHFC may also inspect the Property or request other documentation to ensure compliance with the S.M.A.R.T. Housing standards at any time during the term of this Agreement.
6. **AHFC Lien.** Upon the sale of the homes to eligible homebuyers, AHFC shall release the portion of its lien associated with the parcel being sold, provided Habitat has met the terms of the Loan Agreement, including having each homebuyer sign a Restrictive Covenant Running with the Land, securing the applicable resale obligation.
7. **Homebuyer Closing Process:** At least 7 business days prior to closing on the sale of a home, Habitat shall submit to AHFC all items listed in the **Closing Checklist (Attachment 5)** to this Statement of Work. All items on the Closing Checklist must be received and approved prior to AHFC providing the partial release of its lien.
8. **Uniform Relocation and Real Property Acquisition Act of 1970 (URA).**
- Purchase of Property. Habitat and the Seller must sign URA-compliant “interest” and “offer” letters in the form of **Attachment 6** and **Attachment 7**.
 - Sale of the Home. Habitat and the homebuyer must sign a **Buyer/Seller Certification Form** in the form of **Attachment 8** to this Statement of Work, confirming that the sale of the home is entirely voluntary. Habitat shall submit this form to AHFC with original signatures per the Closing Checklist.
9. **Required Reports, Actions, and Documentation.** Habitat shall submit reports or requests to AHFC according to the following schedule, and other reports or revisions to reports upon request:

Required Reports, Actions, or Documentation Needed	Timeline
All items listed on the Closing Checklist	At least 7 days prior to closing on the sale of a

(Attachment 5).	home constructed under this Agreement
Audited Financial Statements, Auditor's Opinion and Management Letters (See Section ____ of Loan Agreement)	Within 180 calendar days following the end of each Habitat's Fiscal Year (must be provided annually)
Contract Close-Out Package	In such form as may be required by AHFC and within 90 days after the termination of this Loan Agreement, including any extensions granted.

10. **Contract Expiration & Termination.** All homes to be sold with assistance under this Agreement must be constructed and sold before December 31, 2026. AHFC and Habitat shall mutually agree to terminate this Agreement when the homes are conveyed to eligible homebuyers and after Habitat has supplied to AHFC all the necessary documents to close out the contract.
11. **Accessibility/Nondiscrimination Language Requirements.** As required by the City of Austin, Habitat must include the required **Accessibility/Nondiscrimination Language**, provided in **Attachment 9** of this Statement of Work, in all materials related to the development and sale of the homes acquired under this Agreement. These materials include public notices, advertisements, program applications, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees.
12. **Federal Labor Standards Acts (FLSA) Reporting (Davis-Bacon and Related Acts).** This Loan Agreement is subject to the provisions of FLSA as described in **Attachment 15 (HUD Form 4010 – Labor Standards Provisions)**, **Attachment 16 Making Davis-Bacon Work (Contractor's Guide)**, and must comply with **Attachment 17 (Davis-Bacon Act Wage Determination for Travis County)**, and **Attachment 18 (Davis-Bacon Act Poster – Notice to All Employees)**. Both Attachment 17 and 18 must be posted publicly at the workplace.

ATTACHMENTS

- 1 – Current HUD HOME Income Limits
- 2 – CPD Income Eligibility Calculator
- 3 – Income Eligibility Requirements
- 4 – Project Timeline
- 5 – Closing Checklist for Homebuyers
- 6 – [Intentionally left blank]
- 7 – [Intentionally left blank]
- 8 – [Intentionally left blank]
- 9 – Required Accessibility/Nondiscrimination Language
- 10 – Section 3 Business Qualification Questionnaire
- 11 – Section 3 Contractor Certification 2017
- 12 – Self Declaration for Sec 3 Eligible Businesses 2017
- 13 – Contractor Section 3 Monthly Report
- 14 – Contractor-Subcontractor Activity Form
- 15 – HUD Form 4010 – Labor Standards Provisions
- 16 – Making Davis-Bacon Work (Contractor's Guide)
- 17 – Davis-Bacon Act Wage Determination for Travis County
- 18 – Davis-Bacon Act Poster – Notice to All Employees

The City of Austin and the Austin Housing Finance Corporation are committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call (512) 974-3100 (voice) or (512) 974-3102 (TDD) for assistance.

The City of Austin and the Austin Housing Finance Corporation do not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities. David Ondich has been designated as the City's ADA/Section 504 Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your ADA/Section 504 rights, please call the ADA/Section 504 Coordinator at (512) 974-3256 (voice) or (512) 974-2445 (TTY).

This publication is available in alternative formats. Please call (512) 974-3100 (voice) or (512) 974-3102 (TDD) for assistance.

La City of Austin y la Austin Housing Finance Corporation está comprometida a cumplir con los requisitos de la Ley Americanos con Incapacidades (ADA) y con la Sección 504 de la Ley de Rehabilitación de 1973, y sus enmiendas. Bajo petición expresa, se harán las modificaciones que procedan y se proveerá igualdad de acceso a la información. Para asistencia, por favor llame al (512) 974-3100 (voz) o (512) 974-3102 (TDD).

La City of Austin y la Austin Housing Finance Corporation no permite discriminación sobre la base de incapacidad en la admisión o acceso para, o en el tratamiento o empleo, en sus programas y actividades. DAVID ONDICH ha sido designada como la Coordinadora de la ADA/ Sección 504 de la Ciudad de Austin. Su oficina está localizada en 505 BARTON SPRINGS ROAD, SUITE 600. Preguntas o motivos de queja sobre sus derechos bajo la ADA/ Sección 504 deben ser dirigidas a la Coordinadora de la ADA/ Sección 504 al (512) 974-3256 (voz) o (512) 974-2445 (TTY).

Esta publicación está disponible en formatos alternativos. Para asistencia, por favor llame al (512) 974-3100 (voz) o (512) 974-3102 (TDD).



City of Austin, Neighborhood Housing and Community Development Office
P.O. Box 1088, Austin, Texas 78767
(512) 974-3100 Fax (512) 974-3161 www.cityofaustin.org/housing

Attachment 1

2017 Area Median Family Income
For Travis County, Texas
\$81,400 (4-person household)
MSA: Austin – Round Rock, TX.

2017 HOME & CDBG Program Income Limits by Household Size Effective Date: June 15, 2017

Median Income Limit	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household	6 Person Household	7 Person Household	8 Person Household
20%	11,400	13,000	14,650	16,280	17,600	18,900	20,200	21,500
* 30%	17,100	19,550	22,000	24,400	26,400	28,350	30,300	32,250
(30% MFI is defined by HUD as <i>extremely low-income</i>)								
40%	22,800	26,050	29,300	32,560	35,150	37,750	40,350	43,000
* 50%	28,500	32,600	36,650	40,700	44,000	47,250	50,500	53,750
(50% MFI is defined by HUD as <i>very low income</i>)								
* 60%	34,200	39,120	43,980	48,840	52,800	56,700	60,600	64,500
65%	37,050	42,350	47,600	52,910	57,150	61,400	65,600	69,850
70%	39,900	45,600	51,300	56,980	61,550	66,100	70,650	75,200
* 80%	45,600	52,100	58,600	65,100	70,350	75,550	80,750	85,950
(80% MFI is defined by HUD as <i>low-income</i>)								
100%	57,000	65,100	73,250	81,400	87,900	94,400	100,950	107,450
120%	68,400	78,150	87,900	97,680	105,500	113,300	121,100	128,950
140%	79,750	91,150	102,550	113,960	123,100	132,200	141,300	150,450

* Income limits provided by HUD.

Other income limits calculated by NHCD based on the formula used by HUD.

MFI Chart was expanded to include other percentages used by NHCD.

CPD Income Eligibility Calculator User Manual

Version 4.0

3/8/2016

Document History

Release No.	Date	Revision Description
1.0	11/1/12	Initial Creation
1.1	12/7/12	Inserted language about unearned income of minors and full-time students; inserted language about adult members of household; updated screenshots
1.2	3/28/13	Inserted language about addressing grantee requirements
1.3	3/10/14	Removed purge date
2.0	8/12/2014	Updated document to reflect HUD Exchange website rebranding
3.0	1/26/2016	Provided clarification on 30% income limit and minor edits throughout
4.0	3/8/2016	Added the Emergency Solutions Grants Program (ESG)
4.1	3/29/2016	Minor updates

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Introduction

The CPD Income Eligibility Calculator User Manual presents information on using the CPD Income Eligibility Calculator. It contains useful background information, glossary of terms, instructions, and links to additional resources.

The User Manual is organized as follows:

[Section 1: Overview](#)

[Section 2: Using the Calculator](#)

[Section 3: Terms and Definitions](#)

[Section 4: Income Determination Resources](#)

Section 1: Overview

1.1 INCOME CALCULATOR INTRODUCTION

1.1.1 What is the CPD Income Eligibility Calculator?

The CPD Income Eligibility Calculator is an interactive tool that makes determining the income eligibility and assistance amounts for beneficiaries of CPD programs as easy as 1-2-3. Simply enter the requested data and this Calculator will work behind the scenes to generate a summary of results for each beneficiary. You should then print out the summary and include it as part of the beneficiary's file.

The Calculator currently performs income eligibility and assistance amount calculations (as applicable) for the following HUD CPD programs:

- Brownfield Economic Development Initiative (BEDI)
- Community Development Block Grant Program (CDBG)
- CDBG Disaster Recovery Assistance (CDBG-DR)
- Emergency Solutions Grants Program (ESG)
- HOME Investment Partnerships Program (HOME)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Neighborhood Stabilization Program (NSP)
- Section 108 Loan Guarantee Program
- Self-Help Homeownership Opportunity (SHOP)

The CPD Income Eligibility Calculator is a tool designed to assist CPD grantees in their responsibility to accurately calculate and appropriately document their income determinations of CPD program beneficiaries. It is not, and does not provide, online training regarding the rules for determining income (such as whose income to account, etc.) Refer to [Section 4: Income Determination Resources](#) for links to a number of resources that are available about the rules for determining income.

The Calculator is a tool to help a grantee calculate income, but it does not *verify* income. The Calculator should not replace the documentation collected by the grantee. The grantee must maintain all documentation and if using the Calculator, it is helpful to print out and maintain the summary documents generated in the Calculator for Annual Income, and as applicable Adjusted Income and Tenant Payments. Record retention will depend upon the CPD program so grantees should be aware of the length of time records must be kept as well as their own state or local laws related to record retention and privacy.

The Calculator is designed to calculate eligibility based on the amount of income that is entered for the beneficiary. Grantees may have specific requirements written into their policies and procedures that are not included or accounted for in the Income Eligibility Calculator (for example, minimum tenant contribution). Therefore, grantees should always review the final calculations produced from this tool and apply their own grantee's requirements if they are more restrictive. If this is the case, a note should be included in the beneficiary's file noting this change.

1.1.2 HUD Disclaimer

HUD makes no warranties or representations whatsoever regarding the quality, content, completeness, accuracy, or timeliness of the information and data contained in the CPD Income Eligibility Calculator. Please read through the terms and conditions of use, including the [liability and privacy policy](#).

1.1.3 Policy Questions

If you have policy questions about income eligibility and determination, please contact HUD.

- For BEDI, CDBG, CDBG Disaster Recovery Assistance, HOME, and Section 108, contact your local [HUD Field Office](#).
- For ESG, HOPWA, and NSP, submit your question via [HUD Exchange Ask A Question](#) and receive answers directly via email.
- For SHOP, contact HUD's Office of Affordable Housing Programs.

1.1.4 Technical Issues

If you have technical difficulties using the Income Eligibility Calculator, please contact info@hudexchange.info.

Section 2: Using the Calculator

2.1 REGISTER/LOG IN

Go to: <https://www.hudexchange.info/incomecalculator>

2.1.1 Request an Account

To access the Income Eligibility Calculator, you must create an account and log in to the Calculator each time. Your account will give you access to calculations you have created in the past and allow you to create and save new ones.

Step 1: Click on **Register Now** at the right side of the screen.

Step 2: Carefully fill in all fields

- Note that all fields are required
- Be sure to create a username and password you will remember

Step 3: Click the **Create Account** button. Once you submit your registration information, you will be logged in.

2.1.2 Log In

To log in, simply:

Step 1: Enter your username and password.

Step 2: Click on **Log In**.

2.1.3 Forget Username or Password

If you forgot your username or password, please use the following instructions:

Step 1: Enter your email address in the **Forget Username and Password** box on the Income Eligibility Calculator [Sign In](#) page.

Step 2: Click on **Get Password**.

Step 3: You will receive an email at the address you entered containing your username and new password.

Step 4: Follow the log in instructions in the email to access the Calculator.

2.1.3 Change Password

To change your password, please use the following instructions:

Step 1: Click on your user name in the upper right of the screen, then click "My Account." Note: you must be logged into the Income Eligibility Calculator in order to change your password.

Step 2: On the My Account page, click "Change password" and carefully enter a new password into the fields.

Step 3: Click on Submit.

2.2 START A NEW CALCULATION

Prior to starting a new calculation, you should have the following items available:

- A printer (or, a writing instrument and a piece of blank paper);
- Any previous income determinations completed for the beneficiary; and
- Documentation of income for all members of the beneficiary's family or household.

Allow yourself at least 15 minutes to complete each applicant's calculation summary. Some calculations may take longer depending upon the experience of the user, the number of household members, the speed of the internet connection, and other factors.

Go to: <https://www.hudexchange.info/incomecalculator>

2.2.1 Select a Program

Before getting started, it is best to know the mix of programs that may be funding an activity. You should then identify which CPD program has the most restrictive income determination requirements, and follow that program's path within the Income Eligibility Calculator.

From the Income Calculator Dashboard, select the applicable program.

CPD Income Eligibility Calculator Dashboard [User Manual](#) [Help](#)

Important Note: The calculator is a tool designed to help a user calculate income in accordance with an allowable definition, but it does not verify income. The calculator does not replace the documentation that must be collected and retained by the user. The user must maintain all necessary documentation, which, when using the calculator, will include saving and retaining the summary documents generated by the calculator. The Dashboard feature is designed to allow you to more easily update a beneficiary's income in the future – however it is not a repository for all previous years' income calculations completed in the past. Users must be sure to save and retain summary documents at the time of creation. Record retention requirements depend upon the CPD program; users should be aware of the length of time records must be kept as well as their own state or local laws related to record retention and privacy.

The FY2015 income limits are in effect for all programs within the CPD Income Calculator. The 30 percent income limits for the CDBG, HOME, ESG and HOPWA programs have been calculated based on the definition of Extremely Low-income Family (ELI) as described in Consolidated Submission for CPD Programs section of 24 CFR part 91.5. Therefore, the ELI Limit is calculated as 30 percent of area median income and may not be the same as the Section 8 ELI Limit for your jurisdiction. The Section 8 Limit is calculated based on the definition of ELI as described in The 2014 Consolidated Appropriations Act, (Section 238 on page 128 Stat 635) which defines ELI as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30% of area median income.

Select a program and start a new calculation: Select One Start

CDBG Calculations Show 10 entries Search:

Beneficiary ID	No. of Members	Location	Calculation Type	Calculation Date	Status	Eligibility Status	Delete
81	8	Fort Wayne, IN MSA	Annual		In Progress		<input type="checkbox"/>
67	2	Anderson, IN MSA	Annual		In Progress		<input type="checkbox"/>
1045	2	Duluth, MN-WY MSA	Annual		In Progress	Eligible	<input type="checkbox"/>

2.2.2 Select a Beneficiary ID

The Income Calculator asks for a "Beneficiary ID" instead of a "Last Name" to help protect the privacy of applicants to CPD programs. The Beneficiary ID you enter should be unique, will be included on the Calculator screens and printouts, and will be the key data element necessary to later find, complete, and/or edit the income determination performed for that beneficiary within the Calculator.

DO NOT use any personal information to create a Beneficiary ID, including but not limited to names, social security numbers, or addresses.

Each user is responsible for designing their own method for creating Beneficiary IDs, as well as maintaining and adequately protecting their own auditable records which associate each Beneficiary ID with the individual, family, or household whose income was determined (as appropriate and/or required under the rules of each CPD program.) Printouts from the Calculator for all programs except HOPWA will include both the Beneficiary ID and a blank space in which the Last Name of the associated individual, family, or household can be written or otherwise inserted.

IMPORTANT NOTE: Once you create a Beneficiary ID for an individual, family, or household, you cannot edit that Beneficiary ID. If you need to change that Beneficiary ID, you must create a new calculation.

2.2.2 Select Member IDs

The Income Calculator asks for "Member IDs" instead of "First Names" to help protect the privacy of applicants to CPD programs. Each Member ID you enter should be unique to an individual within the family or household associated with this Beneficiary ID. Printouts from the Calculator for all programs except HOPWA will include the Member IDs entered, along with a blank space in which the First Name of the associated individual can be written or otherwise inserted.

DO NOT use any personal information to create Member ID(s), including but not limited to names, social security numbers, or addresses.

Each user is responsible for designing their own method for creating Member IDs, as well maintaining and adequately protecting their own auditable records which connect Member IDs to the associated individuals within the family or household whose income was determined (as appropriate and/or required under the rules of each CPD program.)

The Income Calculator provides capability for up to 12 members per family or household.

Note: Simply leave all checkboxes blank if the member is over the age of 18 years old and does not meet any of the criteria listed on the Beneficiary Member table.

Example: A 26-year old sibling of the head of household who is living in the household who is also non-disabled and is not a full-time student.

IMPORTANT NOTE: Once you select the number of members, you cannot change the number of members for that Beneficiary. If you need to change the number of members, you must create a new calculation.

2.3 ANNUAL INCOME CALCULATION

Prior to calculating income, you should know which CPD program you are using as well as the activity (and for CDBG, NSP, etc. the national objective), or for ESG which component. Each CPD program calculates income a little differently and the rules surrounding the calculation differ depending upon the activity or component. This section is provided in the order of the income calculator, not specifically on the order of how you conduct income eligibility.

2.3.1 Income Limits

The 30 percent income limits used for the CDBG, ESG, HOME, and HOPWA programs have been calculated based on the definition of Extremely Low-Income Family (ELI) as described in Consolidated Submission for CPD Programs section of [24 CFR part 91.5](#). Therefore, the ELI Limit is calculated as 30 percent of area median income and may not be the same as the Section 8 ELI Limit for your jurisdiction. The Section 8 Limit is calculated based on the definition of ELI as described in [The 2014 Consolidated Appropriations Act](#), (Section 238 on page 128 Stat 635) which defines ELI as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30% of area median income.

The remaining income limits (50%, 60%, 80% and for NSP, 120%) are based upon the HUD [income limits](#) are published annually by HUD and are imported into the CPD Income Eligibility Calculator.

For each calculation, the user selects the geographic area (county or metropolitan area), the number of members in the beneficiary household, and the applicable income limit (30%, 50%, 60%, 80%, 120%). The Calculator then applies the

resulting annual income limit to the income determination being performed. Users should print the Income Limit page that is displayed by the Calculator for their files.

The screenshot shows a web application interface for the CPD Income Eligibility Calculator. On the left is a sidebar menu with options: Dashboard, ANNUAL INCOME (selected), Beneficiary ID, Enter data for your situation (highlighted in blue), Income Determination Method, Beneficiary Income, Summary, ADJUSTED INCOME, Dependents, Childcare Expenses, Disability Expenses, Medical Expenses, Summary, TBRA, and Approved Rent/Utility. The main content area is titled 'ANNUAL INCOME' and includes a 'Beneficiary ID: Burt2' label. It prompts the user to 'Please select the location and income limit information applicable to this household.' and provides a link for more information on geographic areas. The form fields are: State (set to District of Columbia), Area (set to Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area), and Applicable 2015 Income Limit for household size in area (set to 30%). Below these fields, it states: 'The 2015 30% Income Limit for a 2-member household in Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area (CBSA: METRO47900M47900) is \$28,200. (Completed on December 30, 2015)'. At the bottom, there is a 'Print' button and a 'Continue >' button.

For 10 metropolitan statistical areas (MSAs), at the 80% income limit, they have the option to use either the HUD published 80% income limit or what is called an “uncapped income limit” based upon an exception the Secretary of HUD is authorized to provide under the Quality and Work Responsibility Act of 1998. The MSAs affected by this law are the following:

- Orange County, CA PMSA;
- San Francisco, CA PMSA;
- San Jose, CA PMSA;
- Danbury, CT PMSA;
- Stamford-Norwalk, CT PMSA;
- Washington, DC-MD-VA-WV PMSA;
- Bergen-Passaic, NJ PMSA;
- Middlesex-Somerset-Hunterdon, NJ PMSA;
- Nassau-Suffolk, NY PMSA; and
- Westchester County, NY

This law only covers HOME and CDBG programs and the uncapped limits are not provided in the Calculator as they are only an option for the grantee and not required. For further information, please check with your HUD Field Office and see the following website: <http://www.hud.gov/offices/cpd/systems/census/lowmod/uncapped.cfm>.

2.3.2 Self Certification of Annual Income by Beneficiary for Programs that Allow This Method

In some cases, activities may choose to use a verifiable self-certification to document the income of beneficiaries in lieu of a full income calculation or for recertification (see section 2.3.3). A verifiable self-certification is based on a Self-Certification of Annual Income by Beneficiary form in which the beneficiary states and signs-off on their income at the time of assistance.

The Self Certification of Annual Income by Beneficiary is a written statement from the beneficiary documenting the definition used to determine Annual (Gross) Income, the number of beneficiary members in the family or household (as applicable based on the activity), and the relevant characteristics of each member for the purposes of income determination. To complete the form, the user selects the definition of income used, fills in the blank fields, and checks

only the boxes that apply to each member. Adult beneficiary members must then sign the form to certify that the information is complete and accurate, and that source documentation will be provided upon request. The form includes space for up to 12 members of a beneficiary. Users should print the Self Certification of Annual Income by Beneficiary form and include the completed form in their beneficiary files. For HOPWA, users must not enter or write any personal information on the printout of the form including but not limited to names, social security numbers, or addresses.

Using a self-certification approach to income documentation can put the activity at possible risk if a beneficiary is later audited and determined to be over the applicable income limit.

The following terms are used in the Self-Certification of Annual Income by Beneficiary form. Each of these terms is defined in the Terms & Definitions section.

- Definition of Income: [HUD 24 CFR Part 5](#); [IRS 1040](#); [American Community Survey](#)
- [Beneficiary ID](#)
- [Member IDs](#)
- [Head of Household](#)
- [Co-Head of Household](#)
- Persons with [disabilities](#)
- [Fulltime student](#)
- [Annual gross income](#)

The user must be aware of when and how to use the calculator to determine the Annual Income of households versus persons within a family. The term “household” is used throughout the ESG, HOME, NSP, and HOPWA, and SHOP portions of the calculator as it is the appropriate term and unit of analysis for income determinations being performed for these housing programs, while persons within a family or family may be the appropriate unit of analysis and term for public services, public facilities or job activities under the CDBG, CDBG Disaster Recovery, Section 108, and BEDI programs. See the terms and definitions for further information.

2.3.3 Recertifications & Re-evaluations

Depending upon the CPD program, recertifications and/or re-evaluations of a household’s annual income is required.

Annual Income Recertification for certain HOME, HOPWA Programs

During an annual income recertification of a family residing in HOME- or HOPWA- assisted rental housing, or receiving HOME [tenant-based rental assistance](#) (TBRA) or HOPWA rental assistance, it is necessary to manually exclude from annual income certain increases in the income of a disabled family member. These exclusions apply to annual income increases resulting from the following:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- Increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- New employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering [Temporary Assistance for Needy Families](#) (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance--provided that the total amount over a six-month period is at least \$500.

These exclusions from annual income are of limited duration. The full amount of increase to a qualified family’s annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, the grantee, or project sponsor is required to exclude from annual income 50

percent of any increase in income. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

Annual Income Recertifications by Government Programs

In some cases, activities may choose to use a verifiable recertification from a government program administrator to document the income of beneficiaries. A verifiable recertification is based on a Recertification of Annual Income by Government Programs form in which a government program administrator states and signs-off on the income of the beneficiary at the time of assistance.

The Recertification of Annual Income by Government Programs is a written statement from the administrator of another government program under which the beneficiary receives benefits, and that examines the annual (gross) income of the beneficiary each year. To complete the statement, the administrator must fill in all of the blank fields, confirm that the information about the members of the beneficiary family or household (as applicable based on the activity) matches the program's records, and sign the form. The form includes space for up to 12 members of a household. Users should print the Recertification of Annual Income by Government Programs form and include the completed form in your beneficiary files. For HOPWA, users must not enter or write any personal information on the printout of the form including but not limited to names, social security numbers, or addresses.

Using a government administrator recertification approach to income documentation can put the activity at possible risk if a beneficiary is later audited and determined to be over the applicable income limit.

The following terms are used in the Self-Certification of Annual Income by Government Programs form. Each of these terms is defined in the Terms & Definitions section.

- [Beneficiary ID](#)
- [Member IDs](#)
- [Annual gross income](#)

Re-Evaluations of Income Eligibility for the ESG Program

Under the Emergency Solutions Grants Program (ESG), income eligibility is re-evaluated every three months for homeless prevention and no less than annually for rapid-rehousing assistance. To remain eligible for assistance at re-evaluation, the household must have an annual income that does not exceed 30% of median family income for the area, as determined by HUD.

2.3.4 Income Definitions

Part 5 Annual Income

Under the Part 5 definition, income sources are either included or excluded as part of Annual Income. The following are typical sources of income:

- [Wages/Salaries](#)
- [Benefits/Pensions](#)
- [Public Assistance](#)
- [Other Income](#)

Unearned Income of Minors

Unearned income that is attributable to a minor (e.g., child support, SSI, TANF payments and other benefits paid on behalf of a minor) is actually part of the relevant adult member's annual income and should be added to that member's income as appropriate. When entering such amounts, it may be helpful to include a note in the Description describing to which minor member the amount is attributable. The Calculator does not include this income in the annual income calculations when it is put under a minor child.

Income of Full-Time Students

The employment income of full-time students in excess of \$480 is not counted in the annual income calculation.

Passbook Rate

Under the Part 5 definition, a household may have assets with an increased payment-ability, even if its assets do not currently produce income. (For example, a household that owns land that is not rented or otherwise used to produce income.) Rather than require the household to dispose of the property, the rule requires that an “imputed” income be calculated based on a Passbook Rate that is applied to the cash value of all assets.

There are three options for the grantee in setting the rate to be used as its passbook savings rate:

1. Use the same passbook savings rate used by their local public housing authority (PHA);
2. Use the passbook savings rate published by HUD’s Office of Multifamily Housing; or

As described in Notice H 2014-15, the Office of Multifamily Housing will publish a passbook savings rate and its effective date through a Housing program notice at least annually (the most current notice is [Notice H 2016-01](#)); or

3. Establish its own passbook savings rate.

If a grantee chooses to establish its own rate in calculating imputed income from assets, then the grantee should review its passbook savings rate at least annually to determine that it is allowable. The grantee may establish a passbook savings rate within 75 basis points (plus or minus .75 percent) of the Savings National Rate in effect at the time the grantee establishes the passbook savings rate, and the passbook savings rate may not be less than 0 percent. The Savings National Rate is a simple average of rates paid by United States (US) depository institutions as calculated by the Federal Deposit Insurance Corporation (FDIC). The FDIC publishes this rate on a weekly basis. Historical and current Savings National Rates can be accessed on the [FDIC website](#).

Please note that for all programs within HUD’s Office of Block Grant Assistance (OBGA), CDBG, CDBG-DR, and NSP, the imputed asset calculation is not required, so including the cash value of assets and using the passbook rate will not be displayed in the calculator.

Part 5 Assets

Under the Part 5 definition, assets are categorized as either:

- **Total \$5,000 or Less** - If the total cash value of all the family’s assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.
- **Exceed \$5,000** - When net family assets are more than \$5,000, annual income includes the greater of the following:
 - a. Actual income from assets; or
 - b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called imputed income from assets. The passbook rate is currently set at 2%.

To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the “imputed income” from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

The following are typical sources of assets:

- [Cash](#) (e.g., checking, savings)
- [Equity](#)
- [Stocks](#)
- [Retirement Accounts](#)
- [Pension Funds](#)
- [Life Insurance](#)
- [Personal Property](#)
- [Lump Sums](#)
- [Deeds](#)

IRS Form 1040 Gross Adjusted

When using the IRS Form 1040 definition to determine an applicant's annual income, users must use the most current long form version of IRS Form 1040—the version filed for current year tax reporting purposes. While the online worksheet is a general representation of the IRS Form 1040, it is not updated annually to reflect all changes in the Income and Deductions line items each tax year. The user is advised to consult the IRS Web site at irs.gov for the most current version of and the instructions for this form. Income or Deduction items included in the most current IRS Form 1040, but not specifically reflected below, may be accommodated using the "Other Income" and "Other Deductions" line items below.

Income Line Items Provided for the IRS

- [Wages, salaries, tips](#), etc.
- [Overtime/bonus pay](#)
- [Raises/COLAs](#)
- [Taxable interest](#)
- [Ordinary dividends](#)
- Taxable refunds, credits, or offsets of state and local income taxes
- [Alimony](#) received
- [Business income or \(loss\)](#)
- [Capital gain or \(loss\)](#)
- Other gains or (losses)
- Taxable amount of [IRA](#) distributions
- Taxable amount of [Pensions](#) and [annuities](#)
- Rentals, real estate, [royalties](#), [partnerships](#), [S corporations](#), [trusts](#), etc.
- [Farm income or \(loss\)](#)
- [Unemployment compensation](#)
- Taxable amount of [Social security benefits](#)
- Other income (if any)

Deduction Line Items Provided for the IRS

- [Educator expenses](#)
- Certain business expenses of reservists, performing artists, and fee-basis government officials
- [Health savings account](#) deduction
- [Moving expenses](#)
- Deductible part of [self-employment](#) tax
- Self-employed SEP, SIMPLE, and qualified plans
- Self-employed health insurance deduction
- [Penalty on early withdrawal of savings](#)
- [Alimony](#) paid
- [IRA](#) deduction
- [Student loan interest](#) deduction
- [Tuition](#) and fees
- [Domestic production activities](#) deduction
- Other Deductions (if any)

American Community Survey

When using the American Community Survey definition to determine an applicant's annual income, users must use the most current version of the American Community Survey. The user is advised to consult the U.S. [Census website](#) for the most current version of and the instructions for the ACS form. Income or Deduction items included in the most current ACS Form, but not specifically reflected below, may be accommodated using the "Other Income" and "Other Deductions" line items below.

- [Wages, salary, commissions, bonuses](#), or [tips](#) from all jobs. Report amount before deductions for taxes, bonds, dues, or other items.

- [Self-employment](#) income from own nonfarm businesses or farm businesses, including proprietorships and [partnerships](#). Report NET income after business expenses.
- [Interest](#), [dividends](#), [net rental income](#), [royalty income](#), or income from [estates](#) and [trusts](#). Report even small amounts credited to an account.
- [Social Security](#) or Railroad Retirement.
- Supplemental Security Income (SSI).
- Any [public assistance](#) or [welfare](#) payments from the state or local welfare office.
- Retirement, survivor, or disability [pensions](#). Do NOT include [Social Security](#).
- Any other sources of income received regularly such as [Veterans' \(VA\) payments](#), [unemployment compensation](#), [child support](#) or [alimony](#). Do NOT include [lump sum](#) payments such as money from an inheritance or the sale of a home.

2.4 ADJUSTED INCOME CALCULATION

The second section of the income calculator is on how to determine adjusted income. This section is not used by all CPD programs.

The adjusted income calculation is used to determine ability to pay for rent and utilities, by first deducting from annual income a set of deductions. For example, adjusted income is used to determine the rent for a tenant in a HOME-only assisted rental unit whose income increases above 80 percent of the area median or when coupled with the final part of the calculator, rental assistance, the tenant payment depending the model chosen by the grantee.

Adjusted income is derived by subtracting any of five deductions (allowances) that apply to the household from the household's [annual \(gross\) income](#). The deductions must be applied whenever adjusted income is calculated for eligible households.

A household's eligibility for adjustments to annual (gross) income depends in part on whether the household qualifies as an [elderly](#) household, a [disabled](#) household, or a non-elderly, non-disabled household. While defined at 24 CFR 5.611, deductions are applied to eligible households regardless of the definition of annual (gross) income that was initially used to determine their eligibility.

2.4.1 Deductions

Elderly or Disabled Household Deductions

A household that meets the definition of an [elderly](#) or [disabled](#) household is entitled to a deduction of \$400 per household.

Dependent Deductions

For each household dependent, deduct \$480 from a household's [annual \(gross\) income](#) when calculating adjusted income. A dependent is defined as any household member who is not the [head](#), [co-head](#), or spouse, but is under the age of 18 years (note that the calculator uses only the terms head or co-head); or [disabled](#) (of any age); or a [full-time student](#) (of any age).

Child Care Expenses Deductions

Reasonable child care expenses for the care of a child age 12 or under may be deducted from annual (gross) income if they enable one or more adult family member to seek employment actively, be gainfully employed, or further his/her education; and if the expenses are not reimbursed.

Reasonable child care expenses for the care of a child age 12 or under may be deducted from annual income if the child care (1) enables an adult family member to seek employment actively, be gainfully employed, or further his/her education; and (2) expenses are not paid to a member of the household and are not reimbursed. The amount of the deduction is unlimited, but the child care expenses must be reasonable (i.e., typical for the area, age of child, etc.).

However, if a full-time student has child care expenses related to employment, these expenses are limited to \$480, as the employment income of full-time students in excess of \$480 is not counted in the annual income calculation.

Medical Expenses Deductions

Elderly or disabled households that have no disability assistance expenses may claim as a deduction medical expenses that are in excess of three percent of their annual (gross) income, so long as they are not already being reimbursed by insurance or through another entity. Medical expenses that may be considered include all medical expenses anticipated to be incurred during the coming year that are not covered by insurance. Although medical expenses are permitted only for elderly or disabled households, once a household qualifies as an elderly or disabled household the medical expenses of all household members are considered.

Disability Assistance Expenses Deductions

Disability assistance expenses can be deducted from a household's annual income to the extent that they exceed three percent of annual income, so long as they are not already being reimbursed by insurance or another entity. Expenses may be deducted if and only if all of the following conditions are met: (1) they are reasonable, (2) they are not reimbursed from another source, (3) they enable a household member to work, (4) they do not exceed the amount of income generated by the person enabled to work, and (5) they are in excess of three percent of annual income.

2.4 RENTAL ASSISTANCE CALCULATION

The final section of the income calculator is on how to determine rental assistance. This section is not used by all CPD programs.

The rental assistance calculation, when coupled with annual and adjusted income, can be used for determining the tenant payment and the amount of assistance applicable to the eligible household in the following situations:

- Tenant and PJ payments under a HOME-funded TBRA program;
- The rent for a tenant if the grantee has a rental housing program in which rents are based on the household's ability to pay; and
- The rent for a tenant receiving HOPWA assistance.

Note: The calculator does not provide rental assistance amounts for ESG rental assistance because the recipient or subrecipient determines the appropriate amount of assistance to provide.

2.4.1 Fair Market Rent/Rent Standard

The rent including applicable utility allowance for unit type and size for the unit typically cannot be above the Fair Market Rent or required rent standard for a jurisdiction when using the certificate program (described below). However, the rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units. Rent must be reasonable to provide HOPWA or HOME rental assistance to house the beneficiary in a unit. Rent reasonableness must be documented for tenant based rental assistance and included in the assisted client's file.

In addition, on a unit-by-unit basis, grantees can have up to 20% of the total TBRA enrollments exceed the FMR/payment standard by 10%. Further, PHAs have the authority to issue a community wide exception on FMR's up to 110% of FMR. If a PHA in the grantee's community has an established rent standard of 110% of FMR, then the grantee may utilize the PHA's established FMR. Additionally, grantees may utilize the rule of an extra 10% for 20% of the units on top of the PHA established FMR. This will allow for a total of 120% for 20% of units and 110% for the remaining units. See HOPWA regulations at 24 CFR 574.320(a)(2) and/or HOME regulations at 24 CFR 92.203.

2.4.2 Approved Rent and Utility Allowances

The approved rent will depend upon the program being used (i.e., HOME, HOPWA, etc.) and what is reasonable for the jurisdiction.

The administrator for the rental program should determine what utility allowances should be used. Typically public housing authorities (PHAs) conduct an annual review of utility costs across a number of different properties in its portfolio. The utility allowance is an estimate of the average monthly utility bills (except telephone) for an energy-conscious household. This estimate considers only utilities paid directly by the tenant. If all utilities are included in the rent, there is not a utility allowance.

2.4.3 Rent Models

This calculator determines assistance amounts using the HUD-prescribed Section 8 method only.

The **Section 8 Rental Certificate Program** assumes a fixed tenant payment - that is, the tenant's share of housing costs, or total tenant payment (TTP), is calculated by formula. The formula for computing TTP under the Certificate Program requires a tenant to pay the greatest of:

- 30 percent of monthly adjusted income;
- 10 percent of monthly annual (gross) income; or
- Welfare rent (which applies only to welfare recipients in as-paid localities).

Under a HOME TBRA program, the PJ would then pay the difference between the tenant's share - the TTP -- and the approved rent for the unit selected by the tenant.

The **Section 8 Rental Voucher Program** assumes a fixed payment from the grantee toward a unit's rent. The maximum grantee subsidy is calculated first, and then the tenant pays the difference between the grantee subsidy and the approved rent for the unit. Using the Rental Voucher method, a grantee establishes its rent standards by unit size for the TBRA program as a whole (see section above on FMR/Rent Standard), and determines 30 percent of each tenant's monthly adjusted income. The difference between these figures is the maximum amount the grantee will pay toward the rent for the unit selected by the tenant. However, a minimum tenant payment of 10 percent of the tenant's monthly annual (gross) income is required.

HOME PJs may establish their own method for determining the TBRA subsidy. You may wish to print the annual and adjusted income summaries from this calculator for reference when using another methodology.

HOPWA grantees should only use the Section 8 Rental Certificate model.

2.5 CALCULATION DASHBOARD

The Calculation Dashboard allows you to start a new calculation, complete a previously started calculation, and review or update a completed calculation. You can also search for a calculation and delete existing calculations. The Dashboard is organized by Program, and each calculation displayed in the dashboard includes the following information:

- [Beneficiary ID](#)
- Number of family or household members
- Location – the City and State selected
- Calculation type – Annual, Adjusted, or TBRA
- Calculation date – the date that the calculation was last updated
- Status – In Progress or Complete

- Eligibility status – Eligible, Ineligible, or Blank if not yet determined

2.5.1 Viewing/Editing Previously Started Calculations

Users may make edits to previously started calculations. From the Calculation Dashboard, find the Calculation and click on the Beneficiary ID.

The calculator stores all data previously entered into the Calculation. The user is required to re-confirm the data by clicking Continue on each screen. You may click on the headings on the left sidebar to skip to various sections of the calculation.

Note the browser back button and previous button on the screen are not always the same due to the various flows for each Program. The browser back button goes to the previous page. The Previous button goes back to the last page from which the user came.

Note new income limits come out each year, typically in the first quarter. If you are in the process of income qualifying a beneficiary, once the income limits are updated in the system, you have to use the new income limits.

CPD Income Eligibility Calculator Dashboard

[User Manual](#) [Help](#)

Important Note: The calculator is a tool designed to help a user calculate income in accordance with an allowable definition, but it does not verify income. The calculator does not replace the documentation that must be collected and retained by the user. The user must maintain all necessary documentation, which, when using the calculator, will include saving and retaining the summary documents generated by the calculator. The Dashboard feature is designed to allow you to more easily update a beneficiary's income in the future – however it is not a repository for all previous years' income calculations completed in the past. Users must be sure to save and retain summary documents at the time of creation. Record retention requirements depend upon the CPD program; users should be aware of the length of time records must be kept as well as their own state or local laws related to record retention and privacy.

The FY2015 income limits are in effect for all programs within the CPD Income Calculator. The 30 percent income limits for the CDBG, HOME, ESG, and HOPWA programs have been calculated based on the definition of Extremely Low-Income Family (ELI) as described in Consolidated Submission for CPD Programs section of 24 CFR part 81.5. Therefore, the ELI Limit is calculated as 30 percent of area median income and may not be the same as the Section 8 ELI Limit for your jurisdiction. The Section 8 Limit is calculated based on the definition of ELI as described in The 2014 Consolidated Appropriations Act, (Section 238 on page 128 Stat 635) which defines ELI as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30% of area median income.

Select a program and start a new calculation:

CDBG Calculations

Show 18 entries

Beneficiary ID	No. of Members	Location	Calculation Type	Calculation Date	Status	Eligibility Status	Delete
91	5	Fort Wayne, IN MSA	Annual		In Progress		<input type="checkbox"/>
87	2	Anderson, IN MSA	Annual		In Progress		<input type="checkbox"/>
945	3	Duluth, MN-WI MSA	Annual		In Progress	Eligible	<input type="checkbox"/>

Section 3: Terms and Definitions

[A](#)[B](#)[C](#)[D](#)[E](#)[F](#)[G](#)[H](#)[I](#)[J](#)[K](#)[L](#)[M](#)[N](#)[O](#)[P](#)[Q](#)[R](#)[S](#)[T](#)[U](#)[V](#)[W](#)[X](#)[Y](#)[Z](#)

A

ACTUAL INCOME FROM ASSETS: Income derived from assets to which family members have access.

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the income from that asset. There are also assets that do not earn interest such as a quantity of money under a mattress: it is a thing of value that could be used to the benefit of its owner, but is not producing income. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset.
2. The calculation to determine the amount of income from assets to include in annual income considers both of the following:
 - a. The total cash value of the family's assets; and
 - b. The amount of income those assets are earning or could earn.

ACS: See [AMERICAN COMMUNITY SURVEY](#).

ADJUSTED GROSS INCOME: Annual income (as determined by the owner) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions. In determining adjusted income, the owner must deduct the following amounts from annual income:

1. \$480 for each dependent;
2. \$400 for any elderly family or disabled family;
3. The sum of the following, to the extent the sum exceeds 3% of annual income: a. Unreimbursed reasonable medical expenses of any elderly family or disabled family; and b. Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older who are able to work because of such attendant care or auxiliary apparatus; and
4. Any reasonable child care expenses necessary to enable the family member to be employed or to further his or her education.[24 CFR 5.611]

ADJUSTED INCOME: See [ADJUSTED GROSS INCOME](#).

ADULT: An individual who is 18 years of age or older or a minor under the age of 18 who has been emancipated to act on his/her own behalf, including the ability to execute a contract or lease.

ALIMONY: An allowance made to one spouse by the other for support pending or after legal separation or divorce.

AMERICAN COMMUNITY SURVEY (ACS): A nationwide survey designed to provide communities with a fresh look at how they are changing. It is a critical element in the [Census Bureau's](#) reengineered 2010 census plan. The ACS

collects information such as age, race, income, commute time to work, home value, veteran status, and other important data from U.S. households.

ANNUAL INCOME: All amounts, monetary or not, which: 1. Go to, or on behalf of, the family head or spouse [or co-head] (even if temporarily absent) or to any other family member; or 2. Are anticipated to be received from a source outside the family during the 12-month period following eligibility; and 3. Which are not specifically excluded [by regulation]. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access. [24 CFR 5.609]

The [HOME Program](#) allows the use of two income definitions for the purpose of determining applicant eligibility:

- Annual income as defined in the Code of Federal Regulations (24 CFR 5.609);
- Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes.

The definitions are collectively referred to as "annual income" and are also used in the [Community Development Block Grant \(CDBG\) Program](#) and also the [American Community Survey](#) (ACS) is also an eligible definition.

ANNUITIES: The sum of money payable yearly or at other regular intervals.

ANTICIPATED ANNUAL INCOME: Gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

APPROVED RENT: Rent requirement as set by HUD that meet one of the following requirements:

1. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under 24 CFR 92.252(a), then the maximum rent for units under this paragraph is that calculated under 24 CFR 92.252(a).
2. The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

The Fair Market Rents for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4 bedroom FMR for each extra bedroom.

ASSETS: Items of value that may be turned into cash. Some assets may earn interest, such as savings accounts. Other assets, such as cash, do not earn interest. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset.

B

BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE (BEDI): The Brownfields Economic Development Initiative (BEDI) is a key competitive grant program that HUD administers to stimulate and promote economic and community development. BEDI is designed to assist cities with the redevelopment of abandoned, idled and underused industrial and commercial facilities where expansion and redevelopment is burdened by real or potential environmental contamination.

BEDI: See [BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE](#).

BENEFICIARY: A family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low household or family incomes.

BENEFICIARY ID: The CPD Income Eligibility Calculator asks for a "Beneficiary ID" instead of a "Last Name" to help protect the privacy of applicants to CPD programs. The Beneficiary ID you enter should be unique, will be included on the Calculator screens and printouts, and will be the key data element necessary to later find, complete, and/or edit the income determination performed for that beneficiary within the Calculator. DO NOT use any personal information to create a Beneficiary ID, including but not limited to names, social security numbers, or addresses.

BENEFITS: Government benefits such as Social Security Benefits, Veterans Administration Benefits, and Unemployment Benefits.

BONUS PAY: Compensation over and above the amount of pay specified as a base salary or hourly rate of pay.

BUSINESS INCOME OR LOSS: Business income is income received from the sale of products or services. For example, fees received by a professional person are considered business income. Rents received by a person in the real estate business are business income. Payments received in the form of property or services must be included in income at their fair market value.

C

CAPITAL GAIN OR LOSS: Everything an individual owns and uses for personal or investment purposes is a capital asset. Examples include a home, household furnishings, and stocks or bonds held in a personal account. When a capital asset is sold, the difference between the basis in the asset and the amount it is sold for is a capital gain or a capital loss. Generally an asset's basis is its cost.

- If you sell the asset for more than your basis it is a capital gain.
- If you sell the asset for less than your basis it is a capital loss.

Capital gains and losses are classified as long-term or short-term. If the asset is held for more than one year before disposed of, the capital gain or loss is long-term. If it is held one year or less, the capital gain or loss is short-term.

CASH: Money in coins or notes, as distinct from checks, money orders, or credit. Cash is either handled individually outside of a bank account or within a bank account such as checking or savings.

CDBG: See [COMMUNITY DEVELOPMENT BLOCK GRANT](#).

CDBG DISASTER RECOVERY ASSISTANCE: Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005, approved February 17, 2009) appropriates \$1 billion to carry out the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) (HCDA) on an expedited basis. These funds will be distributed to grantees that received CDBG funding in Fiscal Year (FY) 2008 in accordance with the provisions of 42 U.S.C. 5306. The grant program under Title XII is commonly referred to as the CDBG Recovery (CDBG-R) program.

CHILDCARE EXPENSES: See [ADJUSTED GROSS INCOME](#).

CHILD SUPPORT: Court-ordered payments, typically made by a noncustodial divorced parent, to support one's minor child or children.

CODE OF FEDERAL REGULATIONS (CFR): The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. It is divided into 50 titles that represent broad areas subject to federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.

CO-HEAD OF HOUSEHOLD: An adult member of the family who is treated the same as a head of the household for purposes of determining income eligibility.

COLA: See [COST OF LIVING ADJUSTMENT \(COLA\)](#).

COMMISSIONS: A fee paid to an agent or employee for transacting a piece of business or performing a service; especially, a percentage of the money received from a total paid to the agent responsible for the business.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG): Created under the Housing and Community Development Act of 1974, this program provides grant funds to local and state governments to develop viable urban communities by providing decent housing with a suitable living environment and expanding economic opportunities to assist low- and moderate-income residents. CDBG replaced several categorical grant programs, such as the Model Cities program, the Urban Renewal program, and the Housing Rehabilitation Loan and Grant program.

COMMUNITY PLANNING AND DEVELOPMENT (CPD): [HUD's](#) Office of Community Planning and Development seeks to develop viable communities by promoting integrated approaches that provide decent housing, a suitable living environment, and expand economic opportunities for low- and moderate-income persons. The primary means toward this end is the development of partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations.

COST OF LIVING ADJUSTMENT (COLA): Employment contracts, pension benefits, and government entitlements (such as Social Security) can be tied to a cost-of-living index, typically to the Consumer Price Index (CPI). A Cost of Living Allowance (COLA) adjusts salaries based on changes in a cost-of-living index. Salaries are typically adjusted annually. They may also be tied to a cost-of-living index that varies by geographic location if the employee moves.

CPD: See [COMMUNITY PLANNING AND DEVELOPMENT](#).

CURRENT CASH VALUE OF ASSETS: Income derived from assets to which family members have access. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the income from that asset. There are also assets that do not earn interest such as a quantity of money under a mattress: it is a thing of value that could be used to the benefit of its owner, but is not producing income. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset.

D

DEDUCTIONS: Amounts subtracted or withheld from your gross income. Some deductions, such as taxes, are required by law. Others are elective. See [ADJUSTED INCOME](#).

DEEDS: A signed and usually sealed instrument containing some legal transfer, bargain, or contract.

DEMOLITION: Structures taken down and removed.

DEPENDENTS: A member of the family other than the head, spouse, or co-head, who is under 18 years of age or is a person with disabilities or a full-time student. Also, a foster child, a foster adult, or a live-in aide may never be a dependent regardless of age or disability.

DISABILITIES: Also known as "Disabled Family or Disabled Household". Disabled household means a household composed of:

1. One or more persons at least one of whom is an adult (18 years or older) who has a disability;
2. Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or wellbeing; or
3. The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part with the deceased member of the household at the time of his or her death. [24 CFR 891.305]

DISABILITY EXPENSES: See [ADJUSTED GROSS INCOME](#).

DIVIDENDS: An individual share of something distributed: as 1. A share in a pro rata distribution (as of profits) to stockholders, 2. A share of surplus allocated to a policyholder in a participating insurance policy.

DOMESTIC PRODUCTION ACTIVITIES: Businesses with "qualified production activities" can take a tax deduction of 3% from net income. This is a tax break pure and simple. The more complicated the business, the more complicated the math for calculating the Domestic Production Activities Deduction. In a nutshell, businesses engaged in manufacturing and other qualified production activities will need to implement cost accounting mechanisms to make sure their tax deduction is accurately calculated.

E

EDUCATOR EXPENSES: Expenses incurred by eligible educators for books, supplies, computer equipment, and supplementary materials used in the classroom. See IRS.gov for more details.

ELDERLY FAMILY/HOUSEHOLD: 1. Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older; 2. The surviving member or members of a family described in paragraph (1) living in a unit assisted under 24 CFR part 891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death; 3. A single person who is 62 years of age or older. 4. Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being. [24 CFR 891.505].

EMERGENCY SOLUTIONS GRANTS PROGRAM: The [HEARTH Act](#) revised the Emergency Shelter Grants Program to create the Emergency Solutions Grants (ESG) Program. The ESG Program provides funding to: (1) improve the number and quality of emergency shelters for homeless individuals and families; (2) help operate these shelters; (3) provide essential social services to shelter residents; and (4) prevent families and individuals from becoming homeless.

EQUITY: The money value of a property or of an interest in a property in excess of claims or liens against it.

ESTATES: the assets and liabilities left by a person at death.

EXCLUSIONS: When determining Annual Income, these are certain types of income and asset sources that are “excluded” from the calculation. Exclusions will depend upon the income definition.

F

FAIR MARKET RENT (FMR): Primarily used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as a rent ceiling in the [HOME](#) or HOPWA rental assistance program where the certificate model is used.

FAMILY: One or more persons related by blood, marriage or adoption.

FARM INCOME OR LOSS: Farm income and expenses includes the amounts realized from the sales, and the expenses incurred in the business of farming, including cultivating operating or managing a farm for profit, either as an owner or a tenant. A farm includes livestock, dairy, poultry, fish, fruit and truck farms. It also includes plantations, ranches, ranges and orchards. If your deductible farm expenses are more than your farm income, you have a loss from the operation of your farm. See [IRS.gov](#) for more details.

FMR: See [FAIR MARKET RENT](#).

FOSTER ADULT: A foster adult is usually an adult with a disability who is unrelated to the family and who is unable to live alone.

FOSTER CHILD: Children that are in the legal guardianship or custody of a State, county, or private adoption or foster care agency, yet are cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

FULLTIME STUDENT: A person who is attending school or vocational training on a full-time basis [24 CFR 5.603].

G

GROSS ANNUAL INCOME: The total income, before taxes and other deductions, received by all members of the tenant’s household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments and such other income items as the Secretary considers appropriate. This is the same term as Annual Income.

H

HEAD OF HOUSEHOLD: The adult member of the family who is the head of the household for purposes of determining income eligibility [24 CFR 5.504].

HEALTH SAVINGS ACCOUNT: An account that allows individuals to pay for current health expenses and save for future qualified medical and retiree health expenses on a tax free basis, with some state exceptions.

HEARTH ACT: The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009. The HEARTH Act amends and reauthorizes the McKinney-Vento Homeless Assistance Act, including the [Emergency Solutions Grants Program \(ESG\)](#).

HOME (HOME INVESTMENT PARTNERSHIPS PROGRAM): Provides formula grants to states and localities that communities use — often in partnership with local nonprofit groups — to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership, or to provide direct rental assistance to low-income people.

HOME AFFORDABILITY PERIOD: Affordability refers to the requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HOME regulations. Affordability requirements vary depending on the nature of the HOME-assisted activity (i.e., homeownership or rental housing).

HOPWA: See [HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS](#).

HOUSEHOLD: All the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA): Provides housing assistance and supportive services to low-income people with HIV/AIDS and their families. HOPWA funds may also be used for case management, mental health services, housing information, nutritional services, transportation, substance abuse treatment, employment services, and other supportive services.

HUD METRO FMR AREA: Indicates that only a portion of the OMB-defined core-based statistical area (CBSA) is in the area to which the [income limits](#) or [FMRs](#) apply. [HUD](#) is required by OMB to alter the name of metropolitan geographic entities it derives from the CBSAs when the geography is not the same as that established by OMB.

I

IL: See [INCOME LIMIT](#).

IMPUTED INCOME FROM ASSETS: See Technical Guide for Determining Income and Allowances Under the HOME Program.

INCLUSIONS: When determining Annual Income, these are certain types of income and asset sources that are “included” in the calculation.

INCOME DETERMINATION: Determination of income which includes all amounts, monetary or not, including the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, and more.

INCOME LIMIT: Determines the eligibility of applicants for HUD's assisted housing programs.

INDIVIDUAL RETIREMENT ACCOUNT: A personal savings plan that offers tax advantages to those who set aside money for retirement. Depending on the individual's circumstances, contributions to the IRA may be deductible in

whole or in part. Generally, amounts in an IRA, including earnings and gains, are not taxed until distributed to the individual.

INTEREST: A charge for borrowed money generally a percentage of the amount borrowed or an amount earned as a result of cash held by a lending institution such as in a checking or savings account.

INTERNAL REVENUE SERVICE: The Internal Revenue Service (IRS) is a federal government agency responsible for tax collection and tax law enforcement.

IRA: See [INDIVIDUAL RETIREMENT ACCOUNT](#).

IRS: See [INTERNAL REVENUE SERVICE](#).

IRS 1040 ADJUSTED GROSS INCOME: One of the definitions of Annual Income. Adjusted Gross Income is defined as gross income minus adjustments to income. Refer to the latest federal income tax return.

IRS FORM 1040: Form used under the IRS 1040 Adjusted Gross Income definition.

J

K

L

LIFE INSURANCE: Insurance providing for payment of a stipulated sum to a designated beneficiary upon death of the insured.

LIHTC: See [LOW-INCOME HOUSING TAX CREDIT](#).

LOW-INCOME HOUSING TAX CREDIT (LIHTC): A tax incentive intended to increase the availability of low-income housing. The program provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects.

LOW/MOD – HOUSING: One of the Community Development Block Grant (CDBG) national objectives for housing activities.

LOW/MOD – JOBS: One of the Community Development Block Grant (CDBG) national objectives for job activities.

LOW/MOD - LIMITED CLIENTELE: One of the Community Development Block Grant (CDBG) national objectives for activities serving limited clientele who are low/moderate income persons.

LOW/MOD - LIMITED CLIENTELE - PRESUMED BENEFIT: One of the Community Development Block Grant (CDBG) national objectives for activities serving limited clientele. Examples include senior centers, homeless shelters, etc.

LOW/MOD - AREA BASIS: One of the Community Development Block Grant (CDBG) national objectives for activities serving areas that can be documented as a low/moderate income area.

LUMP SUMS: A complete payment consisting of a single sum of money as opposed to a series of payments.

M

MA: See [METROPOLITAN AREA](#).

MEDICAL EXPENSES: See [ADJUSTED GROSS INCOME](#).

MEMBER ID: The CPD Income Eligibility Calculator asks for "Member IDs" instead of "First Names" to help protect the privacy of applicants to CPD programs. Each Member ID you enter should be unique to an individual within the family or household associated with this Beneficiary ID. Printouts from the Calculator for all programs except [HOPWA](#) will include the Member IDs entered here along with a blank space in which the First Name of the associated individual can be written or otherwise inserted. DO NOT use any personal information to create Member ID(s), including but not limited to names, social security numbers, or addresses.

METROPOLITAN AREA (MA): A large population nucleus, together with adjacent communities that has a high degree of economic and social integration with that nucleus.

METROPOLITAN STATISTICAL AREA (MSA): An area with at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core, as measured by commuting ties.

MODERATE INCOME: Households whose incomes are between 81 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs, [fair market rents](#), or unusually high or low family incomes.

MOVING EXPENSES: Expenses due to a change in job or business location, or starting a new job or business. See IRS.gov for more details.

MSA: See [METROPOLITAN STATISTICAL AREA](#).

N

NEIGHBORHOOD STABILIZATION PROGRAM (NSP): Provides emergency assistance to state and local governments to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. The Neighborhood Stabilization Program (NSP) provides grants to every state and certain local communities to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes. The program is authorized under Title III of the Housing and Economic Recovery Act of 2008.

NET CASH VALUE OF ASSETS: Total cash value of all assets used in calculating Annual Income.

NET RENTAL INCOME: The remaining income from rent after all expenses have been deducted.

O

ORDINARY DIVIDENDS: Ordinary dividends are a result of the trust or estates' investment in a corporation and are paid out of the earnings and profits of the corporation.

OTHER INCOME: This section of Annual Income in the Calculator allows for input of any other income source not previously included in the other income categories.

OVERTIME: Time in excess of a set limit; working time in excess of a standard day or week.

P

PART 5 ANNUAL INCOME: Also known as HUD 24 CFR Part 5. One of the definitions of Annual Income. Part 5 definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. The rules concerning Section 8 annual income were previously found at 24 CFR Part 813. However, Part 813 was removed from the Federal regulations on October 18, 1996. At the same time, 24 CFR Part 5 was published. Subpart F of Part 5 consolidated the requirements pertaining to income for many of HUD's programs, including Section 8.

PARTICIPATING JURISDICTION (PJ): The term given to any state, local government, or consortium of local governments that HUD has designated to administer a [HOME Program](#). HUD designation as a PJ occurs if a state, local government, or consortium meets the funding thresholds, notifies HUD that it intends to participate in the program, and obtains approval by HUD of a Consolidated Plan.

PARTNERSHIPS: Arrangement where parties agree to cooperate to advance their mutual interests.

PASSBOOK RATE: Interest rate on savings account established periodically by HUD. The Passbook Savings Rate is used to calculate the minimum amount of income from your assets. Either that amount or the amount of income you report for those assets (whichever is greater) are added to your other unearned income and your earned income to calculate your gross non-excluded income.

PENALTY ON EARLY WITHDRAWAL ON SAVINGS: Penalty incurred if you withdraw money from a certificate of deposit or other time-deposit savings account prior to your certificate maturing. The penalty is charged by the bank and withheld directly from your proceeds from the certificate.

PENSION FUNDS: See [PENSIONS](#).

PENSIONS: A fixed sum paid under given conditions to a person following retirement from service or to surviving dependents.

PERSONAL PROPERTY: Property other than real property consisting of things temporary or movable.

PJ: See [PARTICIPATING JURISDICTION](#).

PUBLIC ASSISTANCE: Government aid to needy, aged, or disabled persons and to dependent children.

PUBLIC FACILITY: Infrastructure and facilities necessary to support the services and functions provided by the government or public utility companies. These can include Neighborhood facilities including, but not limited to public schools, libraries, recreational facilities, parks, playgrounds; and facilities for persons with special needs such as facilities for the homeless or domestic violence shelters, nursing homes, or group homes for the disabled.

Q

R

RAISES: An increase in wages or salary.

RECERTIFICATION OF ANNUAL INCOME BY GOVERNMENT PROGRAMS FORM: The Recertification of Annual Income by Government Programs is a written statement from the administrator of another government program under which the beneficiary receives benefits, and that examines the annual (gross) income of the beneficiary each year.

REHABILITATION: The labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs. The term includes where the use of a building is changed to an emergency shelter and the cost of this change and any rehabilitation costs does not exceed 75 percent of the value of the building before the change in use.

RETIREMENT ACCOUNTS: A plan for setting aside money to be spent after retirement. Examples include Individual retirement accounts, 401(k), SIMPLE IRAs, and Multiple retirement accounts.

ROYALTY INCOME: Payment related to the use of a valuable right. This includes payments for the use of trademarks, trade names, service marks or copyrights, whether or not payment is based on the use made of such property, are ordinarily classified as royalties for federal tax purposes. See IRS.gov for more details.

S

SALARY: Fixed compensation paid regularly for services.

S CORPORATIONS: S corporations are corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income. See IRS.gov for more details.

SECTION 108 LOAN GUARANTEE PROGRAM: Section 108 is the loan guarantee provision of the [Community Development Block Grant \(CDBG\) Program](#). Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects.

SECTION 8 RENTAL CERTIFICATE MODEL (FIXED TENANT PAYMENT): The rental assistance model that assumes a fixed tenant payment—the tenant's share of housing costs (Total Tenant Payment [TTP]) is calculated by formula.

The public housing agency (PHA) then pays the difference between the tenant's share and the approved rent for the unit.

SECTION 8 RENTAL VOUCHER MODEL (FIXED PJ PAYMENT): The rental assistance model that assumes a fixed PHA payment—the maximum PHA subsidy is calculated and the tenant pays the difference between the PHA subsidy and the approved rent for the unit.

SELF-CERTIFICATION OF ANNUAL INCOME BY BENEFICIARY FORM: The Self Certification of Annual Income by Beneficiary is a written statement from the beneficiary documenting the definition used to determine Annual (Gross) Income, the number of beneficiary members in the family or household (as applicable based on the activity), and the relevant characteristics of each member for the purposes of income determination.

SELF-EMPLOYMENT: The [IRS](#) defines self-employed people who are required to file self-employment Social Security taxes as a sole proprietor that conducts a trade or business; an independent contractor; member of a partnership; or if you are otherwise in business for yourself.

SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP): SHOP awards grant funds to eligible national and regional non-profit organizations and consortia to purchase home sites and develop or improve the infrastructure needed to set the stage for sweat equity and volunteer-based homeownership programs for low-income persons and families.

SHOP: See [SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM](#).

SLUM/BLIGHT – AREA BASIS: One of the [Community Development Block Grant \(CDBG\)](#) national objectives to indicate an area meets the definition of slum/blight under the regulations.

SLUM/BLIGHT – SPOT BASIS: One of the [Community Development Block Grant \(CDBG\)](#) national objectives to indicate a building meets the definition of slum/blight under the regulations.

SLUM/BLIGHT – URBAN RENEWAL: One of the [Community Development Block Grant \(CDBG\)](#) national objectives, but used rarely as there are few urban renewal areas.

SOCIAL SECURITY BENEFITS: The comprehensive federal program of benefits providing workers and their dependents with retirement income, disability income, and other payments. The Social security tax is used to pay for the program.

SOURCE DOCUMENTATION: Original documentation that demonstrates an income or asset source. Examples include wage statements (i.e., pay stubs), Social Security letters, etc.

STOCKS: The proprietorship element in a corporation usually divided into shares and represented by transferable certificates.

STUDENT LOAN INTEREST: Interest paid on a qualified student loan. See [IRS.gov](#) for more details.

SUPPLEMENTAL SECURITY INCOME (SSI): See [SOCIAL SECURITY BENEFITS](#).

T

TANF: See [TEMPORARY ASSISTANCE FOR NEEDY FAMILIES](#).

TAXABLE INTEREST: Most interest that you either receive or is credited to your account and that can be withdrawn without penalty is taxable income. Examples of taxable interest are interest on bank accounts, money market

accounts, certificates of deposit, and deposited insurance dividends. Interest on insurance dividends left on deposit with the Department of Veterans Affairs, however, is not taxable. See IRS.gov for more details.

TBRA: See [TENANT-BASED RENTAL ASSISTANCE](#).

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): Under the welfare reform legislation of 1996, (the Personal Responsibility and Work Opportunity Reconciliation Act – PWRORA – Public Law 104-193), TANF replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.

TENANT-BASED RENTAL ASSISTANCE (TBRA): HUD assists low- and very low-income families in obtaining decent, safe, and sanitary housing in private accommodations by making up the difference between what they can afford and the approved rent for an adequate housing unit. This is also known as either rental assistance or tenant payments.

TIPS: A gift or a sum of money tendered for a service performed or anticipated: gratuity.

TRUSTS: A property interest held by one person for the benefit of another.

TUITION: The price of or payment for instruction.

U

UNEMPLOYMENT COMPENSATION: Money that substitutes for wages or salary, paid to recently unemployed workers under a government- or union-run program.

URGENT NEED: One of the Community Development Block Grant (CDBG) national objectives, but used rarely under the program.

U.S. CENSUS BUREAU: Serves as the leading source of quality data about our nation's people and economy.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD): Established in 1965, HUD's mission is to increase homeownership, support community development, and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships — particularly with faith-based and community organizations — that leverage resources and improve HUD's ability to be effective on the community level.

UTILITY ALLOWANCE: PHA or administrator's estimate of the average monthly utility bills (except telephone) for an energy-conscious household. This estimate considers only utilities paid directly by the tenant. If all utilities are included in the rent, there is not a utility allowance. Utility allowances vary by unit type and are listed on the project's rent schedule or HAP contract.

V

VETERANS (VA) PAYMENTS: Monetary payment or the furnishing of goods or services having a monetary value to or for an eligible veteran, veteran's dependent, or veteran's survivor.

VERY LOW-INCOME: Households whose incomes do not exceed 50 percent of the median area income for the area, as determined by HUD, with adjustments for smaller and larger families and for areas with unusually high or low incomes or where needed because of facility, college, or other training facility; prevailing levels of construction costs; or fair market rents.

W

WAGES: Payment usually of money for labor or services usually according to contract and on an hourly, daily, or piecework basis.

WELFARE: See [TANF](#).

X

Y

Z

Section 4: Income Determination Resources

Several resources are available to assist in income determination.

4.1 REGULATORY CITATIONS

4.1.1 CDBG Regulations

- 570.3 – Income Definition
- 570.208 – Entitlements – Low Income Targeting
- 570.483 – States – Low Income Targeting
- 570.506 – Income Documentation

4.1.2 HOME Regulations

- 24 CFR 92.2 – Definitions
- 24 CFR 92.203 – Income Determinations and Adjusted Income
- 24 CFR 92.209 – TBRA Eligible Costs and Requirements
- 24 CFR 92.216 – Income Targeting: TBRA and Rental Housing Units
- 24 CFR 92.217 – Income Targeting: Homeownership
- 24 CFR 92.252 – Qualification as Affordable Housing: Rental Housing
- 24 CFR 92.254 – Qualification as Affordable Housing: Homeownership Housing

4.1.3 HOPWA Regulations

- 574.3 – Eligible Persons D
- 5.603 – Annual Income Definition
- 5.609 – Annual Income
- 5.611 – Adjusted Income
- 5.617 – Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income

4.1.4 NSP Regulations

- See CDBG regulations.

4.1.5 ESG Regulations

- 576.2 – Definitions
- 576.401(b) – Re-evaluation Requirements
- 5.609 – Annual Income

4.2 TECHNICAL GUIDANCE

4.2.1 CDBG Technical Guidance

Guide to National Objectives and Eligible Activities for Entitlement Communities

This guide provides explanations on national objectives and eligible activities for Entitlement Communities. View the [Guide to National Objectives and Eligible Activities for Entitlement Communities](#).

Guide to National Objectives and Eligible Activities for State CDBG Programs

This guide provides explanations on national objectives and eligible activities for State CDBG Programs. View the [Guide to National Objectives and Eligible Activities for State CDBG Programs](#).

4.2.2 HOME Technical Guidance

Technical Guide for Determining Income and Allowances for the HOME Program

This self-study guide provides explanations of each of the three definitions of income and a glossary of terms, and describes what sources of income must be included or excluded when conducting income verification. In addition to a description of these basic requirements, the guide provides exercises and case studies to enable readers to test their understanding of the key concepts. View the [Technical Guide for Determining Income and Allowances for the HOME Program](#).

4.2.3 NSP Technical Guidance

Guide to Completing NSP Income Certifications

This guide is intended for grantees and their partners seeking guidance on calculating annual gross income for the purposes of NSP eligibility determination. Before approving client applications for NSP rental or homeownership assistance, grantees and their partners must determine whether annual gross income is at or below NSP income limits. While there are a range of acceptable methods for collecting and certifying income data, this guide focuses on the methods used in HUD's HOME Investment Partnership Program. An income calculation worksheet, formatted in Excel, is embedded at the end of this document. View the [Guide to Completing NSP Income Certifications](#).

4.3 FORMS

4.3.1 IRS Forms

Visit the [IRS website](#) to see the 1040 form and other information about the IRS 1040.

4.3.2 American Community Survey Forms

Visit the [Census website](#) to see the survey form and other information about the American Community Survey (ACS).

4.3.3 HOME Forms

The following forms are available to HOME participating jurisdictions (PJs); however other grantees may find these resources helpful and could adapt to other programs.

Program Eligibility Release Form

This form gives authorization for the named organization to obtain information from a third party relative to his/her eligibility in a HOME TBRA, homebuyer, rental rehabilitation, or homeowner rehabilitation program. It may also be used to determine continued eligibility or rent charged in a HOME TBRA program or HOME-assisted rental housing.

- [View Program Eligibility Release Form in PDF](#)
- [View Program Eligibility Release Form in Word](#)

Recertification of Annual Income by Government Programs

This form is used to certify the amount of funding a household receives through a government program. A government administrator completes this form for the PJ to use when recertifying the income of rental housing tenants.

- [View Recertification of Annual Income by Government Programs in PDF](#)
- [View Recertification of Annual Income by Government Programs in Word](#)

Recertification of Annual Income by Tenant Family

This form is completed by the tenant family to certify the household size and annual income. The tenant family returns this form to the PJ for use when recertifying the income of rental housing tenants.

- [View Recertification of Annual Income by Tenant Family in PDF](#)
- [View Recertification of Annual Income by Tenant Family in Word](#)

Sample Format for Calculating Adjusted Income

This form provides a format that can be used to calculate adjusted income for HOME Program purposes.

- [View Sample Format for Calculating Adjusted Income in PDF](#)
- [View Sample Format for Calculating Adjusted Income in Word](#)

Sample Format for Calculating Part 5 Annual Income

This form provides a format that can be used to assess assets and anticipated income and calculate Part 5 annual income.

- [View Sample Format for Calculating Part 5 Annual Income in PDF](#)
- [View Sample Format for Calculating Part 5 Annual Income in Word](#)

Sample Format for Computing IRS Form 1040 Series Adjusted Gross Income

This form provides a format that can be used to compute the IRS Form 1040 series adjusted gross income.

- [View Sample Format for Computing IRS Form 1040 Series Adjusted Gross Income in PDF](#)
- [View Sample Format for Computing IRS Form 1040 Series Adjusted Gross Income in Word](#)

Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Certificate Model

This form provides a format that can be used to compute the total payment and PJ subsidy for a rental certificate model. This form is used with the Sample Format for Calculating Part 5 Adjusted Income.

- [View Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Certificate Model in PDF](#)
- [View Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Certificate Model in Word](#)

Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Voucher Model

This form provides a format that can be used to compute the total payment and PJ subsidy for a rental voucher model. This form is used with the Sample Format for Calculating Part 5 Adjusted Income.

- [View Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Voucher Model in PDF](#)
- [View Sample Format for Computing Total Tenant Payment and PJ Subsidy: Rental Voucher Model in Word](#)

Verification of Alimony and Separation

This form gives authorization for the HOME PJ to verify alimony and separation payments made to all members of the household applying for participation in the HOME Program.

- [View Verification of Alimony and Separation in PDF](#)
- [View Verification of Alimony and Separation in Word](#)

Verification of Assets on Deposit

This form gives authorization for the HOME PJ to verify assets on deposit for all members of the household applying for participation in the HOME Program.

- [View Verification of Assets on Deposit in PDF](#)
- [View Verification of Assets on Deposit in Word](#)

Verification of Child Support Payments

This form gives authorization for the HOME PJ to verify child support payments made to all members of the household applying for participation in the HOME Program on all or none.

- [View Verification of Child Support Payments in PDF](#)
- [View Verification of Child Support Payments in Word](#)

Verification of Employment

This form gives authorization for the HOME PJ to verify employment income of all the members of the household applying for participation in the HOME Program.

- [View in Verification of Employment in PDF](#)
- [View in Verification of Employment in Word](#)

Verification of Income from Military

This form gives authorization for the HOME PJ to verify military service income of all the members of the household applying for participation in the HOME Program.

- [View Verification of Income from Military in PDF](#)
- [View Verification of Income from Military in Word](#)

Verification of Income from Business

This form gives authorization for the HOME PJ to verify business income of all the members of the household applying for participation in the HOME Program.

- [View Verification of Income from Business in PDF](#)
- [View Verification of Income from Business in Word](#)

Verification of Pensions and Annuities

This form gives authorization for the HOME PJ to verify pension and annuity income of all the members of the household applying for participation in the HOME Program.

- [View Verification of Pensions and Annuities in PDF](#)
- [View Verification of Pensions and Annuities in Word](#)

Verification of Public Assistance Program

This form gives authorization for the HOME PJ to verify public assistance income for all the members of the household applying for participation in the HOME Program.

- [View Verification of Public Assistance Program in PDF](#)
- [View Verification of Public Assistance Program in Word](#)

Verification of Recurring Cash Contributions

This form gives authorization for the HOME PJ to verify recurring cash contributions made to all members of the household applying for participation in the HOME Program.

- [View Verification of Recurring Cash Contributions in PDF](#)
- [View Verification of Recurring Cash Contributions in Word](#)

Verification of Social Security Benefits

This form gives authorization for the HOME PJ to verify Social Security benefit income for all the members of the household applying for participation in the HOME Program.

- [View Verification of Social Security Benefits in PDF](#)
- [View Verification of Social Security Benefits in Word](#)

Verification of Unemployment Benefits

This form gives authorization for the HOME PJ to verify information about unemployment benefits income for all members of the household applying for participation in the HOME Program.

- [View Verification of Unemployment Benefits in PDF](#)
- [View Verification of Unemployment Benefits in Word](#)

Verification of Veterans Administrative Benefits

This form gives authorization for the HOME PJ to verify Veterans Administrative Benefits income for all the members of the household applying for participation in the HOME Program.

- [View Verification of Veterans Administrative Benefits in PDF](#)
- [View Verification of Veterans Administrative Benefits in Word](#)

4.3.4 HOPWA Forms

Income Eligibility Calculation Worksheet

To be eligible for assistance under the HOPWA program, individuals must be at or below 80 percent of area median income (AMI). Project sponsors can use this worksheet to calculate household income and determine eligibility for assistance.

- Download [Income Eligibility Calculation Worksheet \(Excel\)](#)
- View [Income Eligibility Calculation Worksheet \(PDF\)](#)

Income & Resident Rent Calculation Worksheet

With the exception of persons in short-term supported housing, persons receiving rental assistance under the HOPWA program must pay rent. According to the HOPWA regulations, tenants must pay the higher of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly gross income; or (3) The portion of any welfare assistance payments specifically designated for housing costs. This worksheet can be used by HOPWA project sponsors to determine the Resident Rent Payment.

- Download [Income & Resident Rent Calculation Worksheet \(Excel\)](#)
- View [Income & Resident Rent Calculation Worksheet \(PDF\)](#)

Accepted Forms of Income Verification

HOPWA program regulations require verification of all income from participant households. This tool provides examples of acceptable forms of income documentation.

- Download [Accepted Forms of Income Verification \(PDF\)](#)
- View [Accepted Forms of Income Verification \(HTML\)](#)

Disallowance of Increase in Annual Income (Earned Income Disregard)

In February 2001, HUD finalized regulations that require housing providers in certain HUD programs to disregard some or all of the earned income for tenants with disabilities. The Earned Income Disregard, as it is commonly called, allows qualified individuals and families receiving housing assistance to keep more of their earned income for a period of up to two years following an increase in employment income. This resource provides guidance on implementing the Earned Income Disregard for the purpose of calculating client income and resident rent payment.

- View [Disallowance of Increase in Annual Income \(Earned Income Disregard\) \(HTML\)](#)

Zero-Income Affidavit

HOPWA program regulations require verification of all income from participating households. This form can be used as documentation when a household has no income.

- View [Zero-Income Affidavit \(HTML\)](#)



**Income Eligibility Requirement Questionnaire
&
Applicant Affidavit**

Applicants must meet income eligibility requirements. An applicant's gross annual income may not exceed 80% of HUD's median family income for the City of Austin, as adjusted for the household size.

The Austin Housing Finance Corporation (AHFC) will calculate annual gross income in accordance with 24 CFR Part 5. The Part 5 income calculation takes into account gross income and assets.

Applicants must complete the Income Eligibility Questionnaire (page 2) and attach all supporting documentation as indicated in the Income Eligibility Documentation Requirements Checklist (page 3). Applicants must also complete the Applicant Affidavit (pages 4 and 5).

Income Eligibility Limits as of **June 15, 2017**:

Family Size	Maximum Household Income
1 Person	\$ 45,600
2	\$ 52,100
3	\$ 58,600
4	\$ 65,100
5	\$ 70,350
6	\$ 75,550
7	\$ 80,750
8	\$ 85,950

* Income amounts are 80% of Median Family Income for the City of Austin.



Income Eligibility Questionnaire

Please answer the following questions.

1. Has any member of the Household filed a tax return within the last year? ☐ Yes ☐ No
2. Is any member of the household employed and receive wages, salaries, overtime pay, commissions, fees, tips, bonuses, or other compensation for personal services? ☐ Yes ☐ No
3. Does any member of the household have checking account(s)? ☐ Yes ☐ No
4. Does any member of the household have savings account(s)? ☐ Yes ☐ No
5. Does any member of the household have stocks, bonds, Treasury Bills, CDs, brokerage accounts, or money market accounts? ☐ Yes ☐ No
6. Does any member of the household receive periodic payments from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or similar types of periodic payments? ☐ Yes ☐ No
7. Does any member of the household receive payments in lieu of earnings, such as unemployment benefits and disability compensation, worker's compensation, or severance pay? ☐ Yes ☐ No
8. Does any member of the household receive Welfare Assistance? ☐ Yes ☐ No
9. Does any member of the household receive child support, spousal support/alimony, or regular contributions or gifts from persons not residing in the household)? ☐ Yes ☐ No
10. Does any member of the household own real estate or other capital investments? ☐ Yes ☐ No
11. Does any member of the household have IRA, Keogh, retirement, or pension fund accounts? ☐ Yes ☐ No
12. Does any member of the household have life insurance policies available before death (whole or universal life insurance)? ☐ Yes ☐ No
13. Does any member of the household have a revocable trust available? ☐ Yes ☐ No
14. Does any member of the household hold personal property as an investment, such as art, gems, jewelry, coin collections, antique cars, etc.? ☐ Yes ☐ No
15. Has any member of the household received a lump sum payment or in receipt of inheritances, capital gains, lottery winnings, victim's restitution, or insurance settlements? ☐ Yes ☐ No
16. Does any member of the household hold mortgages or deeds of trust? ☐ Yes ☐ No
17. Does any member of the household have any interest or receive payments from Indian trust lands? ☐ Yes ☐ No

If any of the answers are "YES," please attach the required documentation indicated by the corresponding number on the Income Eligibility Documentation Checklist (page 3).



Income Eligibility Documentation Checklist

PLEASE PROVIDE THE FOLLOWING INFORMATION, FOR ALL HOUSEHOLD MEMBERS, IF APPLICABLE:

1. Copy of the most recent year's tax return (with W-2s) for all Household Members who filed separately.
2. Copies of paycheck stubs for the most recent 3 consecutive months, or other documentation of wages, salary, etc.
3. Copies of the last 6 months of all checking account statements.
4. Copies of the most recent savings account statement.
5. Copies of the most recent brokerage or individual account statements for stocks, bonds, Treasury Bills, certificates of deposits, and money market accounts.
6. Proof of amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. Do not include deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
7. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay. Do not include lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses.
8. Proof of amount and type of Welfare Assistance.
9. Proof of amount of periodic allowances, such as child support payments, spousal support/alimony payments, and regular contributions or gifts received from persons not residing in the dwelling.
10. Inventory of Real Estate owned indicating address, value, equity percentage, and proof of indebtedness, if any.
11. Copies of the most recent IRA, Keogh, retirement, and pension fund account statements.
12. Copies of life insurance policies whose funds are available to household member before death (e.g., surrender value or a whole life or universal life policy). Indicate which household member is the beneficiary.
13. Proof of cash value of revocable trusts available to applicant.
14. Value of personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
15. Value of lump sum or one time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
16. Copies of mortgages or deeds of trust held by the applicant.
17. Proof of and amount of interest in Indian trust lands.



Applicant Affidavit

WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Property Address: _____

I/We hereby submit to the Austin Housing Finance Corporation the attached information and documentation required to determine my/my family's eligibility for the new home ownership program operated by Austin Habitat for Humanity or its affiliates. I certify that:

1. the house I am/we are purchasing will be my/our primary residence;
2. neither I nor the Co-Applicant (if any) has owned a home in the past three years;
3. all income eligibility information and documentation is true, correct, and complete; and
4. the following persons listed will be occupying the home after closing:

# in HH	NAME	AGE	RELATIONSHIP	GROSS ANNUAL INCOME
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

Applicant (original signature) _____ date _____

Co-Applicant (original signature) _____ date _____

Austin Habitat for Humanity, or its affiliate organizations, the City of Austin and the Austin Housing Finance Corporation do not discriminate against any applicant based on the information that you provide below or nor will it be a used when considering your application. The information that is requested below is a federal requirement when any funds are provided to a project by the U.S. Department of Housing and Urban Development (HUD).

The Ten-Year Affordability Period & The Restrictive Covenant Running With the Land

I understand that because a certain amount of federal funds were used by Austin Habitat for Humanity, or its affiliates, to acquire and develop this property, the federal government requires that certain restrictions apply to the occupancy or resale of this home for a period of ten (10) years. I understand that during that ten-year period those requirements will be enforced through a legally-binding document called a "Restrictive Covenant Running with the Land." At the time the home is sold to me, I will sign the Restrictive Covenant, and it will be filed in the Official Public Records of the Travis County Clerk's Office.



I understand that the Restrictive Covenant will require the following:

- That I must occupy the home as my principal residence during the 10-year period in which the Restrictive Covenant is in effect;
- If I want to sell the Property during that period, I must first offer to sell it back to Austin Habitat for Humanity, Inc. If Austin Habitat for Humanity chooses not to purchase the property, I understand that I must sell it to a family earning an annual household income not exceeding 80% of the area median family income for Travis County, Texas in effect at the time of sale; and
- That if Austin Habitat for Humanity chooses not to purchase my home, and I resell the Property to an income-eligible family during that fifteen-year period, the sales price must be set so that the monthly principal, interest, taxes and insurance to be paid by the subsequent homebuyer cannot exceed 30% of that subsequent homebuyer's annual household income, and the sales price must be set such that I receive at a minimum the investment I put into the Property, including any improvements.

Demographic Information for Applicant

ETHNICITY

(select **one**)

- ☐ Hispanic or Latino
☐ Not Hispanic or Latino

RACE

(please select **only one**)

- ☐ American Indian or Alaskan Native
☐ Asian
☐ Black or African-American
☐ Native Hawaiian or Other Pacific Islander
☐ White
☐ American Indian or Alaskan Native AND White
☐ Asian AND White
☐ Black or African-American AND White
☐ American Indian or Alaskan Native AND Black or African-American
☐ Other multiple race combinations (please describe):

Gender: ☐ Male ☐ Female
Disabled: ☐ Yes ☐ No

Demographic Information for Co-Applicant

ETHNICITY

(select **one**)

- ☐ Hispanic or Latino
☐ Not Hispanic or Latino

RACE

(please select **only one**)

- ☐ American Indian or Alaskan Native
☐ Asian
☐ Black or African-American
☐ Native Hawaiian or Other Pacific Islander
☐ White
☐ American Indian or Alaskan Native AND White
☐ Asian AND White
☐ Black or African-American AND White
☐ American Indian or Alaskan Native AND Black or African-American
☐ Other multiple race combinations (please describe):

Gender: ☐ Male ☐ Female
Disabled: ☐ Yes ☐ No

ESTIMATED PROJECT TIMELINE

Austin Habitat for Humanity, Inc. – 67 Home Infrastructure Development
\$1,250,000 – G.O. Bond and CDBG Funds [CDFA #14.218]
 (All items may not be applicable)

Developer's Tasks/Stages	Date
Acquisition	4/15/2016
Subdivision Construction Permit	4/2017
Bid Project	4/2017
Begin Site and Infrastructure Construction	5/2017
Begin Home Construction	9/2017
Project Completion	12/2022

PLEASE NOTE: Once construction schedule is known, Borrower will need to submit revised Project Timeline.

Austin Habitat for Humanity, Inc.
Scenic Point Phase II - 67 Home New Construction
Homebuyer Closing Checklist (items needed from Habitat)

Address: _____

Buyer: _____

Please submit to AHFC the items listed below, needed in order to close the sale of the home.

Legal Documents

_____ **COPY** of the executed sales contract

- _____ **Date Sales Contract Signed**
- _____ **Sales Price**
- _____ **# of Bedrooms**
- _____ **# of People in Household**

_____ **COPY** of the Title Commitment

Client Information

_____ **COPY** of all documents required as indicated by Buyer's responses on page 2 and 3 of the Income Eligibility Requirement Package & Applicant Affidavit

_____ **ORIGINAL** signed Applicant Affidavit (submit entire Income Eligibility Requirement Package).

_____ **ORIGINAL** Buyer-Seller Certification Form/Seller's Voluntary Sale Certification

_____ If Homebuyer is currently legally divorced, please provide a **COPY** of the divorce decree.

House Documents

_____ **COPY** of Appraisal (first two pages)

_____ **COPY** of Survey

_____ **COPY** of Certificate of Occupancy (CO)

_____ **COPY** of Green Builder Certificate

_____ Contract/Subcontractor Activity Report Form

_____ "Section 3" - Contractor Questionnaire and/or Certification Forms

Instruction for sending packet:

_____ EMAIL Sherry Cardino once packet is dropped off (note each address delivered)

**Required Accessibility/Nondiscrimination Language
Austin Habitat for Humanity, Inc.
\$1,250,000 – G.O. Bond & CDBG Loan**

The following language must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees that relates to housing developed with the assistance of federal funds:

Austin Habitat for Humanity, Inc. as a contractor of the City of Austin / Austin Housing Finance Corporation is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call Relay Texas at 711 or 1-800-735-2989 (TDD) for assistance.

Austin Habitat for Humanity, Inc., the City of Austin, and the Austin Housing Finance Corporation do not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities. DAVID ONDICH has been designated as the City's Section 504/ADA Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your Section 504/ADA rights, please call the Section 504/ADA Coordinator at (512) 974-3256 (voice) or 974-2445 (TTY).

This publication is available in alternative formats. Please call 711 or or Relay Texas at 1-800-735-2989 (TDD) for assistance

When advertising or providing a notice requirement regarding a meeting, the following language needs to be added to the end of the first paragraph:

For a sign language interpreter, please call Relay Texas at 711 or 1-800-735-2989 (TDD) at least 4-5 days in advance.

Spanish:

La City of Austin y la Austin Housing Finance Corporation y Neighborhood Housing Services of Austin, Inc. está comprometida a cumplir con los requisitos de la Ley Americanos con Incapacidades (ADA) y con la Sección 504 de la Ley de Rehabilitación de 1973, y sus enmiendas. Bajo petición expresa, se harán las modificaciones que procedan y se proveerá igualdad de acceso a la información. Para asistencia, por favor llame al (512) 974-3100 (voz) o (512) 974-3102 (TDD).

La City of Austin y la Austin Housing Finance Corporation no permite discriminación sobre la base de incapacidad en la admisión o acceso para, o en el tratamiento o empleo, en sus programas y actividades. DAVID ONDICH ha sido designada como la Coordinadora de la ADA/ Sección 504 de la Ciudad de Austin. Su oficina está localizada en 505 Barton Springs Road, Suite 600. Preguntas o motivos de queja sobre sus derechos bajo la ADA/ Sección 504 deben ser dirigidas a la Coordinadora de la ADA/ Sección 504 al (512) 974-3256 (voz) o (512) 974-2445 (TTY).

ESTA PUBLICACIÓN ESTÁ DISPONIBLE EN FORMATOS ALTERNATIVOS. PARA ASISTENCIA, POR FAVOR LLAME AL (512) 974-3100 (VOZ) O (512) 974-3102 (TDD).



City of Austin

Neighborhood Housing and Community Development Department
P.O. Box 1088, Austin, TX 78767
(512) 974-3100, Fax: (512) 974-3161
www.cityofaustin.org/housing

SECTION 3 BUSINESS QUALIFICATION QUESTIONNAIRE

Project Name: Scenic Point Subdivision Infrastructure Development

Project Location Address: Johnny Morris Road, North of Loyola Lane

City: Austin State: Texas Zip Code: 78724

Select One

☐

Prime Contractor

☐

Subcontractor

Company Full Legal Name: _____

Company Address: _____

City: _____ State: _____ Zip Code: _____

EIN, Tax I.D. or Social Security Number: _____

Company DUNS Number: _____

Authorized Person Completing This Form:

NAME

TITLE

PHONE

1. Is your firm the Prime Contractor for this project? ☐ Yes ☐ No

2. Is your contractual agreement at least \$100,000.00? ☐ Yes ☐ No

If yes, what is the prime contract amount? \$ _____

3. Is your firm a sub-contractor for this project? ☐ Yes ☐ No

4. Is your contractual agreement at least \$100,000.00? ☐ Yes ☐ No

If yes, what is the sub contract amount? \$ _____

5. Were new employees hired for this project? ☐ Yes ☐ No

6. If so, do they live within the City of Austin city limits? ☐ Yes ☐ No

7. * Do they meet the 80% income limits? ☐ Yes ☐ No

8. Do they live in public housing? ☐ Yes ☐ No

If the answer is "No" on any of the questions 5, 6, 7 or 8, STOP. Sign and date the form.

*** Use Self-Declaration Form to make Determination**

AUTHORIZED PERSON COMPLETING THIS FORM

By my signature, I certify that the foregoing is true and correct.

Authorized Person Signature

Date

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.

Section 3 Contractor Certification (2017)

The work to be performed for Austin Habitat for Humanity or its General Contractor is subject to Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, hereafter called "Section 3."

Section 3 requires that, to the greatest extent feasible, opportunities for training and employment are given to low- or moderate-income *residents* residing in the project area (Travis County) and that a percentage of contracts or subcontracts for work in connection with the project are awarded to "Section 3" *business concerns* located in the project area.

You or your employees are considered "Section 3" residents if: 1) residing in Travis County and having an annual total household income at or below 80 percent of the Median Family income, equal to or less than the amounts shown in the table below; OR 2) currently living in public housing.

Income Limits by Household Size - Effective Date: June 15, 2017

Number of Persons In Household	1	2	3	4	5	6	7	8
Annual Household Income	45,600	52,100	58,600	65,100	70,350	75,550	80,750	85,950

- A "Section 3" business is a business owned 51% or more by "Section 3" residents.

After considering the above information, please complete the following:

This is to certify that _____
(Business Name – Please Print)

(check one)

<input type="checkbox"/>	...is a "Section 3" Business (which means 51 percent or more owned by "Section 3" residents)
<input type="checkbox"/>	...employs "Section 3" residents (which means that 30% of your full-time employees are currently "Section 3" residents, or who were "Section 3" residents within three years of the date of first employment with your business)
<input type="checkbox"/>	...has a commitment to subcontract more than 25% of the dollar amount of all subcontracts to "Section 3" businesses
<input type="checkbox"/>	...none of the above apply; not a "Section 3" business concern

Signature

Title (print)

Date



City of Austin

Neighborhood Housing and Community Development Department
P.O. Box 1088, Austin, TX 78767
(512) 974-3100, Fax: (512) 974-3161
www.cityofaustin.org/housing

SECTION 3 SELF DECLARATION FORM

What is a Section 3 Resident? A Section 3 Resident is 1). A low or very low-income person (at or below 80% MFI), who lives in the City Limits of the City of Austin, or, 2). A resident of public housing

Project Name: Scenic Point Subdivision Infrastructure Development

Project Location Address: Johnny Morris road, North of Loyola Lane

City: Austin State: Texas Zip Code: 78724

Select One

☐

Prime Contractor

☐

Subcontractor

Company Full Legal Name: _____ Phone: _____

City: _____ State: _____ Zip Code: _____

EMPLOYEE INFORMATION:

Employee Name (please print): _____

Job Classification (list all if more than one): _____

Hourly Rate of Pay: _____

Employee Hire Date: _____ Ethnicity: ☐ Hispanic ☐ White ☐ Black ☐ Other

Employee Address: _____

City: _____ State: _____ Zip Code: _____

1. Resident of Public Housing

☐

Yes

☐

No

2. Marital Status – Married?

☐

Yes

☐

No

3. Number of Persons in Household

No. of People

4. Estimated Household Income \$ _____ Monthly \$ _____ Annual

80% Median Family Income Limits by Household Size - Effective Date: June 6, 2016

Number of Persons In Household	1	2	3	4	5	6	7	8
Annual Household Income	45,600	52,100	58,600	65,100	70,350	75,550	80,750	85,950

EMPLOYEE AUTHORIZATION:

My signature certifies that I ☐ am a Section-3 Resident ☐ am NOT a Section-3 Resident within the City of Austin city limits based on the information provided above.

Employee Signature

Date

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.



City of Austin

Neighborhood Housing and Community Development
P.O. Box 1088, Austin, TX 78767
(512) 974-3100, Fax: (512) 974-3112
www.cityofaustin.org/housing

Contractor's Section 3 Monthly Report

Project Name: _____

Prime Contractor: _____

Subcontractor Name: _____

A Section 3-qualified business? ☐ Yes ☐ No

Report for the Calendar Month of: _____

Job Category	Total New Hires	White	Black	Hispanic	Native American	Asian/Pacific American	Hasidic Jews
Professionals							
Technicians							
Office/Clerical							
Const. by Trade:							
Trade:							
Trade:							
Trade:							
Trade:							
Trade:							

Please indicate how this business made low-income people and/or public housing residents aware of job opportunities.

- ☐ Local advertising, signs at project site, through community organizations, etc
- ☐ Participated in program that promotes training/employment of Section 3 residents
- ☐ Participated in program that promotes the award of contracts to Section 3 businesses
- ☐ Coordinated with Youthbuild programs
- ☐ Other: _____

Company Official's Signature

Title

Date

*A Section 3 Resident is a low or very low income person (at or below 80% MFI), who live in the metropolitan area or non- metropolitan county where a HUD-assisted project for housing or community development is located or

*A resident of public housing

Contract and Subcontract Activity

U.S. Department of Housing and Urban Development

OMB Approval No.: 2535-0117 (exp. 1/31/2013)

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency Guadalupe Neighborhood Development Corporation				Check it: PHA <input type="checkbox"/> IHA <input type="checkbox"/>		2. Location (City, State, ZIP Code) 813 E. 8th Street, Austin, Texas 78702					
3a. Name of Contact Person Mark Rogers				3b. Phone Number (Including Area Code) (512) 479-6275		4. Reporting Period <input checked="" type="checkbox"/> Oct. 1 - Sept. 30 (Annual-FY)		5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code. <input style="width:50px;" type="text"/>		6. Date Submitted to Field Office	

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a.	Amount of Contract or Subcontract 7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j.				
									Name	Street	City	State	Zip Code
Guad-Saldana Subd Infrast Phase I	1,500,000	1		N									

CPD: 1 = New Construction 2 = Education/Training 3 = Other	7c: Type of Trade Codes: Housing/Public Housing: 1 = New Construction 2 = Substantial Rehab. 3 = Repair 4 = Service 5 = Project Mangl. 6 = Professional 7 = Tenant Services 8 = Education/Training 9 = Arch/Engrg. Appraisal 0 = Other	7d: Racial/Ethnic Codes: 1 = White Americans 2 = Black Americans 3 = Native Americans 4 = Hispanic Americans 5 = Asian/Pacific Americans 6 = Hasidic Jews
5: Program Codes (Complete for Housing and Public and Indian Housing programs only): 1 = All insured, including Section 8 2 = Flexible Subsidy 3 = Section 8 Noninsured, Non-HFDA 4 = Insured (Management) 5 = Section 202 6 = HUD-Held (Management) 7 = Public/Indian Housing		

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



ATTACHMENT #16

U.S. Department of Housing
and Urban Development

Labor Relations Desk Guide
LR01.DG

DAVIS-BACON

LABOR STANDARDS

*A Contractor's Guide
to Prevailing Wage Requirements
for Federally-Assisted Construction Projects*

January 2012
Previous versions obsolete

INTRODUCTION

This Guide has been prepared for you as a contractor performing work on construction projects that are assisted by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to any Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide which is simple and non-bureaucratic yet comprehensive and which will help you better understand and comply with Davis-Bacon labor standards. HUD's Office of Labor Relations worked closely with the Department of Labor's Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor which has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

There are three chapters in this Guide. The first chapter offers a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance and your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Relations Field staff for your area. If you don't know which staff to contact, a list of Labor Relations field offices and their geographic areas and telephone numbers can be found on HUD's Home Page at the address below.

Visit the Office of Labor Relations on-line:

<http://www.hud.gov/offices/olr>

Obtain additional copies of this Guide and other publications at our website or by telephone from HUD's Customer Service Center at (800)767-7468.

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CHAPTER 1 LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

The following paragraphs describe what the labor standards laws and regulations actually say and what they mean to you on HUD projects:

1-1 DAVIS-BACON AND OTHER LABOR LAWS.

- a. **The Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U. S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

- b. **The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

CWHSSA does not apply to prime contracts of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates, or HUD-determined rates for operation of public housing and Indian block grant-assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, CWHSSA Coverage threshold for overtime and health and safety provision, available on-line at the HUD Labor Relations Library at: www.hud.gov/offices/olr/library.cfm)

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- c. **The Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.
 - d. **The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

1-2 DAVIS-BACON REGULATIONS.

The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in ***Title 29 CFR Parts 1, 3, 5, 6 and 7.*** Part 1 explains how the DOL establishes and publishes DBA wage determinations (aka wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

DOL Regulations are available on-line on the World Wide Web:
http://www.dol.gov/dol/allcfr/Title_29.htm

1-3 CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.

- a. The labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-2554, Supplementary Conditions to the Contract for Construction, which is issued primarily for FHA multifamily housing and other construction projects

administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction or the HUD-5370-EZ (construction contracts ≤\$100,000) which are used for Public and Indian Housing projects.

HUD program labor standards forms are available on-line at:
www.hud.gov/offices/adm/hudclips/index.cfm

- b. **Davis-Bacon Wage Decisions.** The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved.

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:
<http://www.wdol.gov>

1-4 RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR

The principal contractor (also referred to as the *prime or general contractor*) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See Contract Administrator, below.)

To make this Guide easier to understand, the term “prime contractor” will mean the principal contractor; “subcontractor” will mean all subcontractors including lower-tier subcontractors; and the term “employer” will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

1-5 **RESPONSIBILITY OF THE CONTRACT ADMINISTRATOR.**

The ***contract administrator*** is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 2-1, ***The Wage Decision***) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see 2-6, ***Compliance Reviews***) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff. But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs), Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD's Community Development Block Grant (CDBG) and HOME programs. In these cases, the contract administrator will likely be local agency staff. In either case, the guidance for you remains essentially the same.

The DOL also has a role in monitoring Davis-Bacon administration and enforcement. In addition, DOL has independent authority to conduct investigations. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

CHAPTER 2 HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS

WHERE TO START?

Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

SECTION I - THE BASICS

2-1 THE WAGE DECISION.

Davis-Bacon labor standards stipulate the wage payment requirements for Carpenters, Electricians, Plumbers, Roofers, Laborers, and other construction work classifications that may be needed for the project. The Davis-Bacon wage decision that applies to the project contains a schedule of work classifications and wage rates that must be followed. If you don't have it already (and by now you should), you'll want to get a copy of the applicable Davis-Bacon wage decision.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See 1-3, Construction Contract Provisions.

- a. **The work classifications and wage rates.** A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the contract administrator (HUD Labor Relations field staff or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

To make reading lengthy wage decisions easier for you, the contract administrator may prepare a Project Wage Rate Sheet (HUD-4720). This Sheet is a one-page transcript that will show only the classifications and wage rates for a particular project. A blank copy of a Project Wage Rate Sheet is provided for you in the appendix. Also, a fillable version of this form is available on-line at HUDClips (see web address in the Appendix). Contact the contract administrator monitoring your project for assistance with a Project Wage Rate Sheet.

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- b. **Posting the wage decision.** If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of the DOL Davis-Bacon poster titled Employee Rights under the Davis-Bacon Act (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Employee Rights under the Davis-Bacon Act poster is available in English and Spanish on-line at HUDClips (see address in the Appendix).

The Employee Rights under the Davis-Bacon Act poster (WH-1321) replaces the Notice to all Employees. The new poster is available in English and Spanish on-line at HUDClips (see address in the Appendix).

2-2 ADDITIONAL "TRADE" CLASSIFICATIONS AND WAGE RATES.

What if the work classification you need isn't on the wage decision? If the work classification(s) that you need doesn't appear on the wage decision, you will need to request an additional classification and wage rate. This process is usually very simple and you'll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you'll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

- a. **Additional classification rules.** Additional classifications and wage rates can be approved if:
1. The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the county where the project is located).
 2. The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can't request another Electrician classification and rate.)
 3. The proposed wage rate for the requested classification "fits" with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,
 4. The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

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- b. **Making the request.** A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.
- c. **HUD review.** The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will not approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

- d. **DOL decision.** The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL does not approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

It's always a good idea to talk to the contract administrator before submitting an additional classification and wage rate request. The contract administrator can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator can give you an idea about what the DOL will finally decide.

2-3 CERTIFIED PAYROLL REPORTS.

You'll need to submit a weekly certified payroll report (CPR) beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

- a. **Payroll formats.** The easiest form to use is DOL's WH-347, Payroll. A sample copy of the WH-347 is included in the back of this Guide. You may access a fillable version of the WH-347 on-line at HUDClips (see web address in the Appendix). Also, the contract administrator can provide a few copies of the WH-347 that you can reproduce.

You are not required to use Payroll form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.

- b. **Payroll certifications.** The weekly payrolls are called certified because each payroll is signed and contains language certifying that the information is true and correct. The payroll certification language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format which contains the same certification language on the WH-347 (reverse).

DOL's website has Payroll Instructions and the Payroll form WH-347 in a "fillable" PDF format at this address:
www.dol.gov/whd/forms/wh347.pdf

- c. **"No work" payrolls.** "No work" payrolls may be submitted whenever there is a temporary break in your work on the project, for example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. (See tip box, for "no work" payroll exemption!) However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you number payrolls consecutively or if you send a note, you do not need to send "no work" payrolls.

If you number your payroll reports consecutively, you do not need to submit "no work" payrolls!

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- d. **Payroll review and submission.** The prime contractor should review each subcontractor's payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments and protect itself from financial loss should underpayments occur.

- e. **Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.
- f. **Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or from DOL.

2-4 **DAVIS-BACON DEFINITIONS.**

Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

- a. **Laborer or mechanic.** "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, and trainees and, for CWHSSA purposes, watchmen and guards. "Laborers" and "mechanics" are the two groups of workers that must be paid not less than Davis-Bacon wage rates.
1. **Working foremen.** Foremen or supervisors that regularly spend more than 20% of their time performing construction work and do not meet the exclusions in paragraph 2 below are covered "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.
 2. **Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

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- b. **Employee.** Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.

For more information about working subcontractors, ask the contract administrator or your HUD Labor Relations Field Staff for a copy of Labor Relations Letter LR-96-01, Labor standards compliance requirements for self-employed laborers and mechanics. Labor Relations Letters and other helpful Labor Relations publications are available at HUD’s Labor Relations web site (see the list of web site addresses in the Appendix).

- c. **Apprentices and trainees.** The only workers who can be paid less than the wage rate on the wage decision for their work classification are “apprentices” and “trainees” registered in approved apprenticeship or training programs. Approved programs are those which have been registered with the DOL or a DOL-recognized State Apprenticeship Council (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months - 1 year: 70%; etc. The percentage is applied to the journeyman’s wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman’s wage rate on the applicable wage decision for that craft.

1. **Probationary apprentice.** A “probationary apprentice” can be paid as an apprentice (less than the rate on the wage decision) if the DOL or SAC has certified that the person is eligible for probationary employment as an apprentice.
2. **Pre-apprentice.** A “pre-apprentice”, that is, someone who is not registered in a program and who hasn’t been DOL- or SAC-certified for probationary apprenticeship is not considered to be an “apprentice” and must be paid the full journeyman’s rate on the wage decision for the classification of work they perform.
3. **Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use on the job site cannot exceed the ratio of apprentices or trainees to journeymen allowed in the approved program.

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- d. **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees.
1. **Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.
- e. **Fringe benefits** Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

Note that the total hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate or basic rate plus whatever fringe benefit you may provide. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 basic plus \$3 fringe benefits. You can also off-set the amount of the base wage if you pay more in fringe benefits such as by paying or \$9 basic plus \$6 fringe benefits; as long as you meet the total amount. The amount of the base wage that you may off-set with fringe benefits is limited by certain IRS and FLSA requirements.

- f. **Overtime.** Overtime hours are defined as all hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

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- g. **Deductions.** You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick-back” (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

Referring, again, to our example above where the wage decision requiring a \$15 total wage obligation (\$10 basic wage plus \$5 fringe benefits) was met by paying \$9 base wage plus \$6 fringe benefits: Note that overtime rates must be based on one and one-half times the basic rate as stated on the wage decision. In the above example, the employer must pay for overtime: \$15/hr (\$9 basic + \$6 fringe) plus \$5 (one-half of \$10, the wage decision basic rate) for a total of \$20 per hour.

- h. **Proper designation of trade.** You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren’t considered by you to be fully trained as a Carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.
1. **Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each classification in which work was performed only if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.
- i. **Site of work.** The “site of work” is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. “Site of work” can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

SECTION II - REPORTING REQUIREMENTS

2-5 COMPLETING A PAYROLL REPORT.

What information has to be reported on the payroll form? The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's name; his or her work classification (who is working for you and what do they do?), the hours worked during the week, his or her rate of pay, the gross amount earned (how much did they earn?), the amounts of any deductions for taxes, etc., and the net amount paid (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information than you need to keep for IRS, Social Security and other tax and employment purposes.

For many contractors, the Weekly Certified Payroll is the only Davis-Bacon paperwork you need to submit!

You are required to submit certified payrolls to illustrate and document that you have complied with the prevailing wage requirements. The purpose of the contract administrator's review of your payrolls is to verify your compliance. Clearer and complete payroll reports will permit the contract administrator to complete reviews of your payroll reports quickly.

- a. **Project and contractor/subcontractor information.** Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the week dates in the spaces provided. Numbering payrolls is optional but strongly recommended.
- b. **Employee information.** Effective January 18, 2009, payrolls shall not report employee addresses or full Social Security Numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor's records. DOL has modified form WH-347, Payroll, to accommodate these reporting requirements.

- c. **Work classification.** Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

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1. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.
 2. **Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
- d. **Hours worked.** The payroll should show ONLY the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.
- e. **Rate of pay.** Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you do not participate in approved fringe benefit programs, add the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.
1. **Piece-work.** For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.

The effective hourly rate must be reflected on the certified payroll and this hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week-to-week, only that the rate is no less than the rate on the wage decision for the classification of work performed.

Remember, the overtime rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be: $(\$10 \times 1 \frac{1}{2}) + \$5 = \$20/\text{hour}$.

- f. **Gross wages earned.** Show the gross amount of wages earned for work performed on this project. Note: For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the "all projects" earnings.

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- g. **Deductions.** Show the amounts of any deductions from the gross earnings. "Other" deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

Only one employee authorization is needed for recurring (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

- h. **Net pay.** Show the net amount of wages paid.

- i. **Statement of compliance.** The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347). Be sure to complete the identifying information at the top, particularly if you are attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, you must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that you are paying required fringe benefits to approved plans or programs; and 4(b) indicates that you are paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If you are paying a portion of the required fringe benefit to programs and the balance directly to the employee, explain those differences in box 4(c).

Only one Statement of Compliance is required for each employer's weekly payroll no matter how many pages are needed to report the employee data.

- j. **Signature.** Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; xerox, pdf and other facsimiles are not acceptable.

SECTION III - PAYROLL REVIEWS AND CORRECTIONS

2-6 COMPLIANCE REVIEWS.

The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews (see 1-5). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

- a. **On-site interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative, or HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator.
- b. **Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

2-7 TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS.

The following paragraphs describe common payroll errors and the corrective steps you must take.

- a. **Inadequate payroll information.** If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.
- b. **Missing identification numbers.** If the first payroll on which an employee appears does not contain the employee's individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

-
- c. **Incomplete payrolls.** If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.
 - d. **Classifications.** If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision or the employer may request an additional classification and wage rate (see 2-2). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees. (see 2-8 for instructions about wage restitution.)
 - e. **Wage rates.** If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.
 - f. **Apprentices and trainees.** If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.
 - g. **Overtime.** If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:
 - 1. If the project is subject to CWHSSA overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project. The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,
 - 2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA overtime violations. Also, the contract administrator may refer the matter to the DOL for further review.
 - h. **Computations.** If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.
 - i. **Deductions.** If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of certified payroll reports that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.

- j. **Fringe benefits.** If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the Statement of Compliance], the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred. However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.
- k. **Signature.** If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principle of the firm and that person has not been authorized by principle to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principle or other authorized signatory.
- l. **On-site interview comparisons.** If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction certified payroll report.
- m. **Correction certified payroll.** Any and all changes to data on a submitted payroll report must be reported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

2-8 RESTITUTION FOR UNDERPAYMENT OF WAGES.

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project, including wage restitution, must be reported on a certified payroll report.

- a. **Notification** to the Employer/Prime contractor. The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work through the prime contractor when the issues are complex, when there are significant underpayments and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required corrective documentation.

- b. **Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.
- c. **Correction certified payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for wage restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount actually paid. A properly signed Statement of Compliance must accompany the correction payroll.

HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashiers, canceled or other), or employee-signed receipts or waivers.

- d. **Review of correction CPR.** The contract administrator will review the correction certified payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a correction certified payroll within 30 days.
- e. **Unfound workers.** Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such cases, at the end of the project the prime contractor will be required

to place in a deposit or escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD.

CHAPTER 3 LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING, DEPOSITS AND ESCROW ACCOUNTS, AND SANCTIONS

WHAT HAPPENS WHEN THINGS GO WRONG?

3-1 INTRODUCTION.

Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, "things going wrong" usually means there's a difference of opinion or a dispute about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before the DOL; or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of what you may expect and what you can do to make your views known and to lessen any delays in resolving the problem or issue.

3-2 ADMINISTRATIVE REVIEW ON LABOR STANDARDS DISPUTES.

As mentioned in the Introduction above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

- a. Additional classifications and wage rates. Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.
 1. Reconsideration. The DOL normally identifies the reasons for denial in its response to the request. Any interested person (for example, the contract administrator, employer, representatives of the employees) may request reconsideration of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (See 2-2(d), and also DOL Regulations 29 CFR 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

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2. **Administrative Review Board.** Any interested party may request a review of the Administrator's decision on reconsideration by the DOL's Administrative Review Board. DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR 1.9.)

- b. **Findings of underpayment.** Compliance reviews and other follow-up enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of back wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the DOL. The request for hearing must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to DOL for review and further consideration. All requests for DOL hearing must be submitted through the HUD Headquarters Office of Labor Relations.

1. **DOL review.** The DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review. If DOL concludes that violations have occurred, you will be given an opportunity to correct any underpayments or to request a hearing before a DOL Administrative Law Judge (ALJ). (See DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.)
2. **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

3-3 **WITHHOLDING.**

The contract administrator shall cause withholding from payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after written notification to the prime contractor. DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is considered to be serious and is not taken unless warranted. If withholding is deemed necessary, you will be notified in writing. Only the amounts needed to meet the contractor's (and/or subcontractors') liability shall be withheld.

3-4 **DEPOSITS AND ESCROWS.**

In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and final payments provided the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See 1-4, Responsibility of the Principal Contractor, and 2-8, Restitution for Underpayment of Wages.

- a. **Where the parties have agreed to amounts of wage restitution that are due but the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages, e.g., some of the workers have moved and could not be located.** The amount of the deposit is equal to the total gross amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who cannot be located are held in the deposit/escrow account for three years and disposed as described in 2-8(f) of this Guide.
- b. **Where underpayments are suspected or alleged and an investigation has not yet been completed.** The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor.

If the parties agree to the investigative findings, the amounts due to the workers will be paid by the employer. As these workers are paid and proper documentation is provided to the contract administrator, the gross amounts corresponding to the documented payments are returned to the depositor.

1. If the employer is unable to make the payments to the workers, e.g., lacks the funds necessary, the contract administrator may make disbursements directly to the workers in the net amounts calculated by the employer. The amounts withheld from the workers for tax deduction will be returned to the employer as payments to workers are made. The employer shall be responsible for reporting and transmitting withholdings to the appropriate agencies.

-
2. If the employer is not cooperating in the resolution, the contract administrator shall make disbursements to the workers in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See 2-8(f) and 3-4(a)).

If the parties do not agree and an administrative hearing is requested, the escrow will be maintained as explained in 3-4(c), below.

Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Relations staff in your area.

- c. **Where the parties are waiting for the outcome of an administrative hearing** that has been or will be requested contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

3-5 ADMINISTRATIVE SANCTIONS.

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

- a. **DOL debarment.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (debarred) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.
- b. **HUD sanctions.** HUD sanctions may include Limited Denials of Participation (LDPs), debarments and suspensions.
 1. **Limited Denial of Participation.** HUD may issue to the employer a limited denial of participation (LDP) which prohibits the employer from further participation in HUD programs for a period up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.

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2. **Debarment and suspensions.** In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications) or may initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

3-6 FALSIFICATION OF CERTIFIED PAYROLL REPORTS.

Contractors and/or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Relations staff in your area.

ACRONYMS AND SYMBOLS

CDBG -	Community Development Block Grant
CFR -	Code of Federal Regulations
CPR -	Certified Payroll Report
CWHSSA -	Contract Work Hours and Safety Standards Act
DBA -	Davis-Bacon Act
DBRA -	Davis-Bacon and Related Acts
DOL -	Department of Labor
FHA -	Federal Housing Administration
FLSA -	Fair Labor Standards Act
HUD -	Housing and Urban Development (Department of)
IHA -	Indian Housing Authority
LCA -	Local Contracting Agency
LDP -	Limited Denial of Participation
O/T -	Overtime
PHA -	Public Housing Agency
S/T -	Straight-time
SAC -	State Apprenticeship Council/Agency
TDHE -	Tribally-Designated Housing Entity
§ -	Section
¶ -	Paragraph

DAVIS-BACON - RELATED WEB SITES*

HUD Office of Labor Relations:

www.hud.gov/offices/olr

HUD Regulations:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

HUDClips (HUD Forms and Publications):

www.hud.gov/offices/adm/hudclips/index.cfm

DOL Davis-Bacon and Related Acts Homepage:

<http://www.dol.gov/whd/contracts/dbra.htm>

DOL Regulations:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Davis-Bacon Wage Decisions:

www.wdol.gov

DOL Forms:

www.dol.gov/whd/programs/dbra/forms.htm

***Web addresses active as of January 2012**

Project Wage Rate Sheet			U.S. Department of Housing and Urban Development Office of Labor Relations			
Project Name:			Wage Decision Number/Modification Number:			
Project Number:			Project County:			
Work Classification	Basic Hourly Rate (BHR)	Fringe Benefits	Total Hourly Wage Rate	Laborers Fringe Benefits		\$
Bricklayers			\$	Group #	BHR	Total Wage
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	Operators Fringe Benefits:		\$
Plumbers			\$	Group #	BHR	Total Wage
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Workers			\$			\$
Tapers			\$			\$
Tile Setters			\$	Truck Drivers Fringe Benefits:		\$
Other Classifications				Group #	BHR	Total Wage
			\$			
			\$			
			\$			
Additional Classifications (HUD Form 4230-A)						
Work Classification	Basic Hourly Rate (BHR)	Fringe Benefits	Total Hourly Wage Rate	Date of HUD Submission to DOL		Date of DOL Approval
			\$			
			\$			
			\$			

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



U.S. Wage and Hour Division

Rev. Dec. 2008

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No. 1215-0149 Expires 12/31/2011
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING DEDUCTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
							FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	

While completion of Form WH 347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing the burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room 53502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(over)

Date _____

I, _____
(Name of Signatory Party) _____
(Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____, on the _____
(Contractor or Subcontractor)

_____ that during the payroll period commencing on the _____
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____.

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 83 Stat. 108, 72 Stat. 967; 78 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ - in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

[illegible]

REMARKS

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE

U.S. Department of Housing and Urban Development
Office of Departmental Operations and Coordination
Washington, DC 20410

Email: www.OfficeofLaborRelations@hud.gov

Labor Relations Desk Guide
LR01.DG



Attachment 17

General Decision Number: TX170019 01/06/2017 TX19

Superseded General Decision Number: TX20160019

State: Texas

Construction Type: Residential

Counties: Bastrop, Caldwell, Hays, Travis and Williamson
Counties in Texas.

RESIDENTIAL CONSTRUCTION PROJECTS consisting of single family homes and garden type apartments up to and including 4 stories.

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017

* SUTX1983-003 03/01/1983

	Rates	Fringes
Air Conditioning Mechanic.....	\$ 7.25	
BRICKLAYER.....	\$ 10.00	
CARPENTER.....	\$ 7.265	
CEMENT MASON/CONCRETE FINISHER...	\$ 8.00	
ELECTRICIAN.....	\$ 7.50	
FLOOR LAYER: CARPET (SOFT)		
FLOOR.....	\$ 7.25	
Form Setter.....	\$ 7.25	
Insulation Installer.....	\$ 7.25	
IRONWORKER.....	\$ 7.25	
Laborers:		
Laborers.....	\$ 7.25	
Pipelayers.....	\$ 7.25	
PAINTER.....	\$ 7.94	
PLUMBER.....	\$ 7.50	
Power equipment operators:		
Backhoe.....	\$ 7.25	
Front end loaders.....	\$ 7.25	
Graders.....	\$ 7.25	
Rollers.....	\$ 7.25	
ROOFER, Including Built Up, Composition and Single Ply Roofs.....	\$ 10.00	
Sheet metal worker.....	\$ 10.00	
Sheet Rocker.....	\$ 8.00	
TRUCK DRIVER.....	\$ 7.25	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

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EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:



Sherry Cardino
(512) 974-3153

Neighborhood Housing and Community Development

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:



Sherry Cardino
(512) 974-3153

Neighborhood Housing and Community Development

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV



Insurance Requirements
Austin Habitat for Humanity, Inc.

Agreement: Acquisition and Development Program Loan Agreement

Borrower: AUSTIN HABITAT FOR HUMANITY, INC.

Section 1 Borrower, from the date of the Agreement until termination of the Agreement, shall carry insurance in the following types and amounts for the duration of the Agreement:

- 1.1 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:
 - 1.1.1 Blanket Contractual liability coverage for liability assumed under this contract;
 - 1.1.2 Products and completed operations coverage;
 - 1.1.3 Independent contractors coverage;
 - 1.1.4 Personal and Advertising injury coverage;
 - 1.1.5 Additional Insured endorsement in favor of the AHFC (Form CG 2010);
 - 1.1.6 Waiver of Subrogation endorsement in favor of the AHFC (Form CG 2404); and
 - 1.1.7 30-Day Notice of Cancellation endorsement in favor of the AHFC (Form CG 0205).
- 1.2 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the AHFC:
 - 1.2.1 Additional Insured endorsement (Form TE 9901B);
 - 1.2.2 Waiver of Subrogation endorsement (Form TE 2046A); and
 - 1.2.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 1.3 All risk property coverage including but not limited to fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned and/or acquired by Borrower with respect to the Agreement. The coverage shall be at replacement cost with an 80% coinsurance clause and, if the property is located in a flood prone area or 25 year or 100 year flood plain, include flood coverage. The AHFC shall be a mortgage/loss payee on the policy As Their Interest May Appear.

Section 2 If the insurance policies are written for less than the amounts specified in Section 1 of these Insurance Requirements, Borrower shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

Section 3 Borrower shall provide AHFC at least thirty (30) calendar days written notice of erosion of the aggregate limit below the minimum required combined single limit of coverage.

Section 4 Borrower shall not acquire any property or commence work under the Agreement until it has obtained all required insurance and until the Risk Management Division of the AHFC has reviewed such insurance coverage.

Section 5 AHFC prefers that the required insurance be written by a company licensed to do business in the State of Texas at the time the policy is issued. In any event, the company must be rated by A.M. Best at B+ VII or better and reasonably acceptable to AHFC. However, with respect to Employers Liability and Workers' Compensation Insurance, a policy written by the Texas Workers' Compensation Fund is acceptable.

Section 6 All endorsements, naming the AHFC as additional insured, waivers, notices of cancellation, notices of non-renewal or any other endorsements as well as the Certificate of Insurance shall:

6.1 Name the AHFC at the following notice address:

Austin Housing Finance Corporation
Attn: RHDA Program Manager
P.O. Box 1088
Austin, Texas 78767

6.2 Obligate the insurance company to notify in writing the AHFC at its notice address of any non-renewal, cancellation or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

Section 7 The "other" insurance clause shall not apply to AHFC where AHFC is an additional insured shown on the policy. It is intended that the policies required in the Agreement, covering both AHFC, Borrower, shall be considered primary coverage as applicable.

Section 8 Borrower shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or the twenty-four month period following completion, in the case of a claims-made policy.

Section 9 AHFC reserves the right to review this Insurance Requirement during the effective period of the Agreement and to make reasonable adjustments to insurance coverages, and their limits, when deemed necessary and prudent by AHFC based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company, as well as that of Borrower.

Section 10 AHFC shall be entitled, upon request, and without expense to AHFC, to receive copies of the requisite insurance policies and all endorsements thereto and may make any reasonable

requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions. (Except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies).

Section 11 Actual losses, deductibles and self-insured retentions stated in policies, if any, which are not covered by insurance as required by this Insurance Requirement, are not allowable costs under the Agreement.